

1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 IN RE:

Chapter 11

6 HIGHLAND CAPITAL  
MANAGEMENT, L.P.,

CASE NO.  
19-34054-SGI11

7 Debtor.

8 HIGHLAND CAPITAL MANAGEMENT, L.P.,

9 Plaintiff,

10 vs.

Adversary  
Proceeding No.  
21-03000-SGI

11 HIGHLAND CAPITAL MANAGEMENT  
12 FUND ADVISORS, L.P.; NEXPOINT  
13 ADVISORS, L.P.; HIGHLAND  
14 INCOME FUND; NEXPOINT  
15 STRATEGIC OPPORTUNITIES FUND;  
16 NEXPOINT CAPITAL, INC.; and  
17 CLO HOLDCO, LTD.,

18 Defendants.

19 REMOTE VIDEOTAPED DEPOSITION OF

20 FRANK WATERHOUSE

21 October 19, 2021

22 Reported by: Susan S. Klinger, RMR-CRR, CSR

23 Job No: 201195

1 WATERHOUSE - 10-19-21

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4

October 19, 2021

5

9:30 a.m.

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Remote Deposition of FRANK WATERHOUSE,

10

held before Susan S. Klinger, a Registered

11

Merit Reporter and Certified Realtime Reporter

12

of the State of Texas.

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A P P E A R A N C E S:

(All appearances via Zoom.)

Attorneys for the Reorganized Highland Capital  
Management:

John Morris, Esq.

Hayley Winograd, Esq.

PACHULSKI STANG ZIEHL & JONES

780 Third Avenue

New York, New York 10017

Attorneys for the Witness:

Debra Dandeneau, Esq.

Michelle Hartmann, Esq.

BAKER MCKENZIE

1900 North Pearl Street

Dallas, Texas 75201

Attorneys for NexPoint Advisors, LP and  
Highland Capital Management Fund Advisors,  
L.P.:

Davor Rukavina, Esq.

An Nguyen, Esq.

MUNSCH HARDT KOPF & HARDD

500 North Akard Street

Dallas, Texas 75201-6659

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2 Attorneys for Jim Dondero, Nancy Dondero, HCRA,  
3 and HCMS:

4 Deborah Deitsch-Perez, Esq.

5 Michael Aigen, Esq.

6 STINSON

7 3102 Oak Lawn Avenue

8 Dallas, Texas 75219

9  
10 Attorneys for Dugaboy Investment Trust:

11 Warren Horn, Esq.

12 HELLER, DRAPER & HORN

13 650 Poydras Street

14 New Orleans, Louisiana 70130

15  
16 Attorneys for Marc Kirschner as the trustee for  
17 the litigation SunTrust:

18 Deborah Newman, Esq.

19 QUINN EMANUEL URQUHART & SULLIVAN

20 51 Madison Avenue

21 New York, New York 10010

22  
23 Also Present:

24 Ms. La Asia Canty

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2 P R O C E E D I N G S

3 VIDEOGRAPHER: Good morning,

4 Counselors. My name is Scott Hatch. I'm a  
5 certified legal videographer in association  
6 with TSG Reporting, Inc.

7 Due to the severity of COVID-19 and  
8 following the practice of social  
9 distancing, I will not be in the same room  
10 with the witness. Instead, I will record  
11 this videotaped deposition remotely. The  
12 reporter, Susan Klinger, also will not be  
13 in the same room and will swear the witness  
14 remotely.

15 Do all parties stipulate to the  
16 validity of this video recording and remote  
17 swearing, and that it will be admissible in  
18 the courtroom as if it had been taken  
19 following Rule 30 of the Federal Rules of  
20 Civil Procedures and the state's rules  
21 where this case is pending?

22 MR. HORN: Yes.

23 MS. DANDENEAU: Yes.

24 MR. MORRIS: Yes. John Morris. I  
25 would just try to do a negative notice

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2 here, as we did yesterday. If anybody has  
3 a problem with what was just stated, can  
4 you state your objection now?

5 Okay. No response, so everybody  
6 accepts the stipulation and the instruction  
7 that was just given.

8 VIDEOGRAPHER: Thank you. This is  
9 the start of media labeled Number 1 of the  
10 video recorded deposition of Frank  
11 Waterhouse In Re: Highland Capital  
12 Management, L.P., in the United States  
13 Bankruptcy Court for the Northern District  
14 of Texas, Dallas Division, Case Number  
15 21-03000-SGI.

16 This deposition is being held via  
17 video conference with participants  
18 appearing remotely due to COVID-19  
19 restrictions on Tuesday, October 19th, 2021  
20 at approximately 9:32 a.m. My name is  
21 Scott Hatch, legal video specialist with  
22 TSG Reporting, Inc. headquartered at 228  
23 East 45th Street, New York, New York. The  
24 court reporter is Susan Klinger in  
25 association with TSG Reporting.



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2 Counsel, please introduce  
3 yourselves.

4 MR. MORRIS: John Morris, Pachulski  
5 Stang Ziehl & Jones for the reorganized  
6 Highland Capital Management, L.P., the  
7 plaintiff in these actions.

8 MS. DANDENEAU: Deborah Dandeneau  
9 from Baker McKenzie. My partner, Michelle  
10 Hartmann, is also in the room with me,  
11 representing Frank Waterhouse individually.

12 MS. DEITSCH-PEREZ: Deborah  
13 Deitsch-Perez from Stinson, LLP,  
14 representing Jim Dondero, Nancy Dondero,  
15 HCRA, and HCMS.

16 MR. HORN: Warren Horn with Heller,  
17 Draper & Horn in New Orleans representing  
18 Dugaboy Investment Trust.

19 MR. RUKAVINA: Davor Rukavina with  
20 Munsch Hardt Kopf & Harr in Dallas  
21 representing NexPoint Advisors, LP and  
22 Highland Capital Management Fund Advisors,  
23 L.P.

24 MR. AIGEN: Michael Aigen from  
25 Stinson, and I represent the same parties

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2 as Deborah Deitsch-Perez.

3 MS. NEWMAN: This is Deborah Newman  
4 from Quinn Emanuel. We represent the  
5 litigation -- Marc Kirschner as the trustee  
6 for the litigation SunTrust.

7 MR. MORRIS: I think that is  
8 everybody.

9 VIDEOGRAPHER: Thank you. Will the  
10 court reporter please swear in the witness.

11 FRANK WATERHOUSE,  
12 having been first duly sworn, testified as  
13 follows:

14 EXAMINATION

15 BY MR. MORRIS:

16 Q. Please state your name for the  
17 record.

18 A. My name is Frank Waterhouse.

19 Q. Good morning, Mr. Waterhouse. I'm  
20 John Morris, as you know, from Pachulski Stang  
21 Ziehl & Jones. You understand that my firm and  
22 I represent Highland Capital Management, L.P.;  
23 is that right?

24 A. Yes.

25 Q. Okay. And do you understand that

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2 we're here today for your deposition in your  
3 individual capacity?

4 A. Yes.

5 Q. Did you review and -- did you  
6 receive and review a subpoena that Highland  
7 Capital Management, L.P., served upon you?

8 A. Yes.

9 Q. You have been deposed before; right?

10 A. Yes.

11 Q. How many times have you been  
12 deposed?

13 A. About three or four times.

14 Q. Okay. And I defended you in one  
15 deposition; isn't that right?

16 A. That is correct.

17 Q. So the general ground rules for this  
18 deposition are largely the same as the  
19 depositions you have given before. And that is  
20 I will ask you a series of questions, and it is  
21 important that you allow me to finish my  
22 question before you begin your answer; is that  
23 fair?

24 A. Yes.

25 Q. And it is important that I allow you

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2 to finish your answers before I begin a  
3 question, but if I fail to do that, will you  
4 let me know?

5 A. I can certainly do that.

6 Q. Okay. Do you understand that this  
7 deposition is being videotaped?

8 A. Yes.

9 Q. You understand that I may seek to  
10 use portions of the videotape in a court of  
11 law?

12 A. I did not know that, until you just  
13 said that.

14 Q. Okay. And you are aware of that now  
15 before the deposition begins substantively; is  
16 that right?

17 A. Yes.

18 Q. So unlike I think the other  
19 depositions that you have given, this one is  
20 being given remotely. So that presents some  
21 unique challenges, at least as compared to a  
22 deposition that is taken in-person.

23 From time to time we're going to put  
24 documents up on the screen, Mr. Waterhouse.  
25 And it is important that I give you the

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2 opportunity to review any portion of the  
3 document that you think you need in order to  
4 fully and completely answer the question.

5 So I would ask you to let me know if  
6 there is a portion of a document that you need  
7 to see in order to fully and completely answer  
8 the question. Can you do that for me?

9 A. Yes.

10 MS. DANDENEAU: Mr. Morris, I would  
11 just note that we do have hard copies of  
12 the documents that you sent, so if you can  
13 just refer to the exhibit number as  
14 reflected in the documents that you sent,  
15 Mr. Waterhouse will be able to look at the  
16 hard copies of those documents.

17 MR. MORRIS: I appreciate that,  
18 and -- and I will encourage him to do so.  
19 There will be other documents that we did  
20 not send to you that we'll be using today  
21 though.

22 Q. Okay. With that as background, if  
23 there is anything that I ask you, sir, that you  
24 don't understand, will you let me know?

25 A. Yes.

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2 Q. Okay. Are you currently employed?

3 A. Yes.

4 Q. By whom?

5 A. The Skyview Group.

6 Q. When did you become employed by the  
7 Skyview Group?

8 A. I believe March 1st of 2021.

9 Q. Do you have a title at Skyview?

10 A. Yes.

11 Q. What is your title?

12 A. My title is chief financial officer.

13 Q. Do you report to anybody in your  
14 role as CFO?

15 A. I don't, no.

16 Q. No. Is there a president or a CEO  
17 of Skyview?

18 A. Yes.

19 Q. Who is that?

20 A. That is Scott Ellington.

21 Q. But you don't report to  
22 Mr. Ellington; is that right?

23 A. I don't think so.

24 Q. Does Skyview Group --

25 MS. DANDENEAU: Excuse me, we --

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2 A. I -- I -- I might. I just -- I  
3 don't recall.

4 Q. Okay. Does Skyview Group provide  
5 any services to any entity directly or  
6 indirectly owned or controlled by Jim Dondero?

7 A. Yes.

8 Q. Can you name -- is that pursuant to  
9 written contracts?

10 A. Yes.

11 Q. And do you know how many contracts  
12 exist?

13 A. Approximately six or so.

14 Q. And is the Skyview Group made up of  
15 individuals who were formerly employees of  
16 Highland Capital Management, L.P.?

17 A. No.

18 Q. Do you know how many -- how many --  
19 how many employees does Skyview have?

20 A. Approximately 35.

21 Q. And can you tell me how many of  
22 those 35 are former officers, directors, or  
23 employees of Highland Capital Management, L.P.?

24 A. I don't know the exact number.

25 Q. Is it more than 20?

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2 A. Yes.

3 Q. Is it more than 30?

4 A. I don't know.

5 Q. Can you tell me what portion of  
6 Skyview -- Skyview's revenue is derived from  
7 entities that are directly or indirectly owned  
8 or controlled by Jim Dondero?

9 MS. DANDENEAU: Mr. Morris, I mean,  
10 you called Mr. Waterhouse here individually  
11 for purposes of his testimony in connection  
12 with the noticed litigation. I have given  
13 you some leeway to ask him some background  
14 information about Skyview Group, but this  
15 is not a substitute for a deposition in  
16 connection with any other pending disputes  
17 that exist. And -- and we agreed to accept  
18 the subpoena on the basis of he -- this is  
19 testimony that he is giving in connection  
20 with the noticed litigation.

21 I really think that you are now  
22 going a little bit far afield from the  
23 purpose of this deposition.

24 MR. MORRIS: Okay. It is -- I'm not  
25 intending to use these -- the answers to



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2 these questions for any purpose other than  
3 this litigation. I think you understand  
4 fully why I'm asking the questions, and I  
5 just have a couple more, if you will bear  
6 with me.

7 MS. DANDENEAU: Okay.

8 MS. DEITSCH-PEREZ: Can we have an  
9 agreement that an objection by one is an  
10 objection for any other party here?

11 MR. MORRIS: Sure. I would -- I  
12 would encourage that, sure.

13 MS. DEITSCH-PEREZ: Thank you.

14 MR. MORRIS: It can't be sustained  
15 or overruled more than one time, so...

16 Q. Mr. Waterhouse, can you answer my  
17 question, please.

18 MS. DANDENEAU: Do you want to  
19 repeat it, Mr. Morris, for his benefit?

20 MR. MORRIS: Sure.

21 Q. Can you -- can you tell me the  
22 approximate portion of Skyview's revenue that  
23 is derived from entities that are directly or  
24 indirectly owned or controlled by Mr. Dondero?

25 A. I don't know the exact number.

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2 Q. Is it more than 75 percent?

3 A. Yes.

4 Q. Is it more than 90 percent?

5 A. I don't know.

6 Q. Okay. Can I refer to Highland  
7 Capital Management, L.P., as Highland?

8 A. Yes.

9 Q. All right. And you previously  
10 served as Highland's CFO; correct?

11 A. Yes.

12 Q. When did you join Highland?

13 A. I don't recall the exact date.

14 Q. Can you tell me what year?

15 A. 2006.

16 Q. When did you -- in what year did you  
17 become Highland's CFO?

18 A. I don't recall the exact date.

19 Q. I'm not asking you for the exact  
20 date. I'm asking you if you recall the year in  
21 which you were appointed CFO.

22 A. I don't recall the exact year.

23 Q. Can you tell me which years it is  
24 possible that you were appointed to CFO of  
25 Highland?

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2 A. 2011 or 2012.

3 Q. Did you serve as Highland's CFO on a  
4 continuous basis from in or around 2011 or 2012  
5 until early 2021?

6 A. Yes.

7 Q. During that entire time you reported  
8 directly to Jim Dondero; correct?

9 A. I -- I don't know.

10 Q. Is there anybody else you reported  
11 to -- withdrawn.

12 Did you report to Mr. Dondero for  
13 some portion of the time that you served as  
14 CFO?

15 A. Yes.

16 Q. Is there a portion of time that you  
17 don't recall who you reported to?

18 A. Yes.

19 Q. What portion of time do you have in  
20 your mind when you can't recall who you  
21 reported to?

22 A. From the 2011 to -- for  
23 approximately a year or two.

24 Q. Okay. So is it fair to say that you  
25 reported to Mr. Dondero in your capacity as CFO

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2 from at least 2014 until the time you left  
3 Highland?

4 MS. DANDENEAU: Objection to form.

5 A. I don't want to speculate the exact  
6 or what year that changed or -- so I would like  
7 to stick with my testimony.

8 Q. Can you recall when you began  
9 reporting to Mr. Dondero?

10 A. I don't recall.

11 Q. Can you -- can you give me an  
12 estimate of what year you think you might have  
13 began reporting to Mr. Dondero?

14 A. I will go back to my prior  
15 testimony.

16 Q. Okay. There is no -- you have no  
17 ability to tell me when you began reporting to  
18 Mr. Dondero.

19 Do I have that right?

20 MS. DANDENEAU: Objection to form.

21 A. I don't recall.

22 Q. Okay. Do you recall who you might  
23 have reported to before you began reporting to  
24 Mr. Dondero?

25 A. Yes.

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2 Q. Who might you have reported to in  
3 your capacity as CFO before you started  
4 reporting to Mr. Dondero?

5 A. That would have been Patrick Boyce.

6 Q. Are you aware that Highland filed  
7 for bankruptcy on October 19th, 2019?

8 A. Yes.

9 Q. And we refer to that as the petition  
10 date?

11 A. Yes.

12 Q. Okay. Do you hold any professional  
13 licenses, sir?

14 A. Yes.

15 Q. Can you tell me what professional  
16 licenses you hold?

17 A. I'm a certified public accountant.

18 Q. Okay. Anything else?

19 A. No.

20 Q. Do you have any other professional  
21 licenses or certificates?

22 A. When you say "professional license,"  
23 that is not education?

24 Q. Tell me -- sure. Anything other  
25 than a driver's license.

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2 Do you have any other license or  
3 certificate or certification?

4 A. Are you asking, like, where I went  
5 to school and the --

6 Q. I am not. I am not. I didn't say  
7 education. I didn't ask about degrees.

8 Do you know what a license is?

9 A. Well, yeah, I mean, a license is  
10 something you get after you receive a certain  
11 level of proficiency.

12 Q. Do you have any licenses or  
13 certifications other than your CPA?

14 MS. DANDENEAU: Objection, form.

15 I assume you mean professional  
16 licenses, Mr. Morris; correct?

17 Q. Can you answer my question, sir?

18 A. Mr. Morris, I'm thinking. I  
19 don't -- I don't think I have any others.

20 Q. Are you familiar with an entity  
21 called Highland Capital Management Fund  
22 Advisors?

23 A. Yes.

24 Q. Were you ever -- can we refer to  
25 that entity as HCMFA?

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2 A. Yes.

3 Q. Were you ever employed by HCMFA?

4 A. Not that I recall.

5 Q. Were you ever -- did you ever hold  
6 the title of an officer or director of HCMFA?

7 A. Yes.

8 Q. What title did you hold?

9 A. Treasurer.

10 Q. When did you become the treasurer of  
11 HCMFA?

12 A. I don't recall.

13 Q. Can you tell me the year?

14 A. I don't -- I don't know the year.

15 Q. Can you approximate the year in  
16 which you became the treasurer of HCMFA?

17 A. I don't know.

18 Q. Can you tell me if it was before or  
19 after 2016?

20 A. I don't recall.

21 Q. Are you still the -- do you know if  
22 you're still the treasurer of HCMFA today?

23 A. Today, I am the acting treasurer for  
24 HCMFA.

25 Q. Is there a distinction between

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2 treasurer and acting treasurer?

3 A. I said "acting treasurer" as I am an  
4 employee of Skyview, as you previously  
5 stated -- or asked.

6 Q. But you are the treasurer of HCMFA  
7 today; correct?

8 A. I am -- I am the acting treasurer  
9 for HCMFA.

10 Q. How did you become the treasurer of  
11 HCMFA?

12 A. Are you asking how I became the  
13 treasurer of HCMFA today?

14 Q. How did you become appointed to  
15 serve as the treasurer of HCMFA?

16 A. Well, in -- in -- in what time  
17 capacity?

18 Q. The first time that you were  
19 appointed.

20 A. First time. I believe I was asked  
21 to serve as treasurer for HCMFA the first time.

22 Q. By who? Who asked you to do that?

23 A. I don't recall.

24 Q. Is there anything that would refresh  
25 your recollection as to who appointed you as



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2 the treasurer of CF- -- HCMFA for the first  
3 time?

4 A. I don't -- I mean, there would be  
5 some documents, some legal documents. I don't  
6 know where those are.

7 Q. How many times have you been  
8 appointed the treasurer of HCMFA?

9 A. I don't know.

10 Q. Was it more than once?

11 A. I don't know.

12 Q. Can you tell me any period of time  
13 since 2016 that you did not hold the title of  
14 treasurer of HCMFA?

15 MS. DANDENEAU: Objection to form.

16 A. I don't recall.

17 Q. What are your duties and  
18 responsibilities as the treasurer of HCMFA?

19 A. My duties are to do the best job  
20 that I can as the -- as an accountant and  
21 finance guy.

22 Q. What specific duties and  
23 responsibilities do you have as the treasurer  
24 of HCMFA?

25 A. My duties are to do the best job

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2 that I can as the accounting and finance person  
3 for HCMFA.

4 Q. As the accounting and finance person  
5 for HCMFA, do you have any particular areas of  
6 responsibility?

7 A. Yeah, it is to manage the accounting  
8 and finance function for HCMFA.

9 Q. Would that include -- do you have  
10 responsibility for overseeing HCMFA's annual  
11 audit?

12 A. Can I please elaborate on my prior  
13 question?

14 Q. Of course. You -- you are giving  
15 answers. I'm asking questions.

16 A. Okay. Yes, so the -- it -- like I  
17 said, it is to manage the accounting finance  
18 aspect, but I am, as we discussed, the  
19 treasurer. That is -- being treasurer is what  
20 gives me that -- that management function.

21 Q. Does anybody report to you in your  
22 capacity as treasurer of HCMFA?

23 A. I don't believe so.

24 Q. Does HCMFA have a chief financial  
25 officer?

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2 A. I don't -- I don't know.

3 Q. You don't know?

4 You're the treasurer of HCMFA but  
5 you don't know if HCMFA has a chief financial  
6 officer.

7 Do I have that right?

8 A. That's right.

9 Q. Okay. Have you heard of a company  
10 called NexPoint Advisors?

11 A. Yes.

12 Q. We will refer to that as NexPoint.  
13 Okay?

14 A. Okay.

15 Q. Were you ever employed by NexPoint?

16 A. I don't recall.

17 Q. Did you ever hold any title with  
18 respect to the entity known as NexPoint?

19 A. Yes.

20 Q. What titles have you held in  
21 relation to NexPoint?

22 A. Treasurer. I think it was only  
23 treasurer.

24 Q. Can you tell me the approximate year  
25 you became the treasurer of NexPoint?

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2 A. I don't know.

3 Q. Are you still the treasurer of  
4 NexPoint today?

5 A. I am the acting treasurer for  
6 NexPoint.

7 Q. When did your title change from  
8 treasurer to acting treasurer?

9 A. I don't know.

10 Q. Did your duties and responsibilities  
11 change at all when your title was changed from  
12 treasurer to acting treasurer?

13 A. I don't -- I don't believe so.

14 Q. Why did --

15 A. I still manage the finance and  
16 accounting function for NexPoint.

17 Q. Why did your title change from  
18 treasurer to acting treasurer?

19 A. I don't -- I'm using the term  
20 "acting treasurer" as I'm a Skyview employee.  
21 I don't -- I don't know -- again, I am a -- as  
22 I am the Skyview employee.

23 Q. Okay.

24 A. And we -- we provide officer  
25 services.

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2 Q. And you serve as an officer of  
3 HCMFA; correct?

4 A. I think we went over that with my  
5 testimony. Yes, I'm the acting treasurer for  
6 HCMFA.

7 Q. And you are an officer of NexPoint;  
8 correct?

9 A. I think -- I am the acting treasurer  
10 for NexPoint Advisors.

11 Q. And -- and who appointed you acting  
12 treasurer of NexPoint Advisors?

13 A. I don't recall specifically.

14 Q. Do you have any recollection of who  
15 might have appointed you the treasurer of  
16 NexPoint?

17 A. I mean, it -- it -- I don't recall  
18 exactly who it was.

19 Q. Who were the possibilities?

20 MS. DEITSCH-PEREZ: Object to the  
21 form.

22 Q. You can answer.

23 A. Someone in the legal group for  
24 NexPoint. The other officers as well.

25 Q. Have you heard of a company called

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2 Highland Capital Management Services, Inc.?

3 A. Yes.

4 Q. We will refer to that as HCMS.

5 Okay?

6 A. HCMS. Okay.

7 Q. Were you ever employed by HCMS?

8 A. No.

9 Q. Have you ever held any titles in  
10 relation to HCMF -- I apologize -- HCMS?

11 A. Yes.

12 Q. What titles have you held in  
13 relation to HCMS?

14 A. Treasurer and acting treasurer.

15 Q. When did you first become treasurer  
16 or acting treasurer of HCMS?

17 A. I don't recall the exact dates.

18 Q. Can you recall -- can you  
19 approximate the year that you became the  
20 treasurer of HCMS?

21 A. I don't -- I don't know.

22 Q. Are you still the treasurer of HCMS  
23 today?

24 A. I am the acting treasurer for HCMS.

25 Q. And are your duties and

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2 responsibilities as the acting treasurer for  
3 HCMS and the acting treasurer for NexPoint the  
4 same as your duties and responsibilities in  
5 your role as the acting treasurer of HCMFA?

6 A. More or less.

7 Q. Have you ever heard of a company  
8 called HCRE Partners, LLC?

9 A. Yes.

10 Q. And do you understand that that  
11 entity is now known today as NexPoint Real  
12 Estate Partners?

13 A. I did not know that.

14 Q. All right. Can we refer to HCRE  
15 Partners as HCRE?

16 MS. DANDENEAU: Objection to form.

17 Did you mean NexPoint Real Estate  
18 Partners, Mr. Morris?

19 MR. MORRIS: No.

20 MS. DANDENEAU: Oh.

21 MR. MORRIS: He said he wasn't  
22 familiar that it was succeeded by that  
23 entity. So --

24 MS. DANDENEAU: Okay.

25 MR. MORRIS: -- let's go with what

1 WATERHOUSE - 10-19-21

2 the witness knows.

3 Q. You're familiar with an entity  
4 called HCRE Partners, LLC; correct?

5 A. Yes.

6 Q. Okay. So that is the entity that we  
7 will refer to as HCRE. If you're aware of any  
8 successor, that is great. If not, let's just  
9 define it as such.

10 Have you ever been employed by HCRE  
11 or any entity that you know to have succeeded  
12 HCRE?

13 A. No.

14 Q. Did you ever serve as an officer or  
15 director of HCRE or any successor?

16 A. Not that I recall.

17 Q. Okay. Can we refer to NexPoint and  
18 HCMFA as the advisors?

19 A. Yes.

20 Q. In general, the advisors provided  
21 investment advisory services to certain retail  
22 funds; correct?

23 A. Yes.

24 Q. And we will refer to the retail  
25 funds that are served by the advisors



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2 collectively as the retail funds; is that okay?

3 A. Okay.

4 Q. Each of the retail funds is governed  
5 by a board; correct?

6 A. Yes.

7 Q. And do you know the people who serve  
8 on the boards of the retail funds?

9 MS. DANDENEAU: Objection to form.

10 A. I don't know all of them.

11 Q. Do you know whether the same people  
12 serve on the board of each of the retail funds  
13 as we've defined that term?

14 A. Which -- so when you say "retail  
15 funds" -- again, I want to be -- what retail  
16 funds are you referring to, because there are  
17 -- there are several distinctions?

18 What retail funds are you using when  
19 you refer to them?

20 Q. That is why -- that is why I tried  
21 to define the terms. So let me do it again.

22 Retail funds for the purposes of  
23 this deposition means any retail fund to which  
24 either of the advisors provides advisory  
25 services. Okay?

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2 A. Okay.

3 Q. Okay. So do you know whether the  
4 same people serve on the board of each of the  
5 retail funds?

6 A. I don't know.

7 Q. Were you ever employed by any of the  
8 retail funds?

9 A. No.

10 Q. No?

11 A. No.

12 Q. Okay. Do you have any title with  
13 respect to any of the retail funds?

14 A. Yes.

15 Q. What titles do you hold --  
16 withdrawn.

17 Do you have the same titles with  
18 respect to all of the retail funds or do  
19 they -- or just something else?

20 MS. DANDENEAU: Objection to form.

21 Q. Withdrawn.

22 Do you have the same title with  
23 respect to each of the retail funds?

24 A. No.

25 Q. Tell me which title you have with

1 WATERHOUSE - 10-19-21

2 respect to each retail fund.

3 Actually, let's do it a different  
4 way. I withdraw the question.

5 Can you give me one title you have  
6 in relation to any retail fund?

7 A. Yes.

8 Q. What title -- what title can you  
9 give me?

10 A. Principal executive officer.

11 Q. Do you serve as principal executive  
12 officer for each of the retail funds?

13 A. No.

14 Q. Can you identify for me the retail  
15 funds in which you serve as the principal  
16 executive officer?

17 A. Yes. Highland Funds 1, Highland  
18 Funds 2, Highland Income Fund, Highland Global  
19 Allocation Fund.

20 Q. I'm sorry, you said "Global  
21 Allocation Fund"?

22 A. Yes.

23 VIDEOGRAPHER: Excuse me,

24 Mr. Morris. This is the videographer. I'm  
25 concerned about the lighting in the

1 WATERHOUSE - 10-19-21

2 witness' camera.

3 Do you want to go off the record and  
4 make some adjustments?

5 MR. MORRIS: Sure, but just for this  
6 purpose. I don't want to take a break. We  
7 just started.

8 MS. DANDENEAU: Yeah, that is fine.  
9 That is fine. We're going to put you on  
10 mute.

11 MR. MORRIS: All right.

12 MS. DANDENEAU: I'm going to try to  
13 open up some of the shades.

14 VIDEOGRAPHER: We're going off the  
15 record at 10:08 a.m.

16 (Recess taken 10:08 a.m. to 10:11 a.m.)

17 VIDEOGRAPHER: We are back on the  
18 record at 10:11 a.m.

19 Q. Mr. Waterhouse, when did you become  
20 the principal executive officer of the four  
21 retail funds that you just identified?

22 A. I don't recall.

23 Q. Do you recall the approximate year  
24 that you became the principal executive officer  
25 of the four funds?

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2 A. 2021.

3 Q. Did you ever hold any title with  
4 respect to any of the four funds you have just  
5 identified other than principal executive  
6 officer?

7 A. I don't recall.

8 Q. Is it possible that you held a  
9 position or a title with the four funds you  
10 just identified prior to 2021?

11 A. Yes.

12 Q. But you don't recall if you did or  
13 not; do I have that right?

14 A. No. You -- I thought you asked, did  
15 I hold other titles.

16 Q. Did you hold any title at the four  
17 retail funds for which you now serve as  
18 principal executive officer at any time prior  
19 to 2021?

20 A. Yes.

21 Q. What titles did you hold?

22 A. I don't recall all the titles.

23 Q. Do you recall any of the titles?

24 A. Yes.

25 Q. What titles do you recall holding at

1 WATERHOUSE - 10-19-21

2 those four retail funds before 2021?

3 A. Principal executive officer.

4 Q. Were you the principal executive  
5 officer of the four retail funds that you have  
6 identified?

7 A. Sorry, could you repeat the  
8 question?

9 Q. Were you the principal executive  
10 officer for each of the four retail funds that  
11 you have identified?

12 A. Yes.

13 Q. When did you become the principal  
14 executive -- withdrawn.

15 Can you give me the approximate year  
16 that you became the principal executive officer  
17 for each of the four retail funds you've  
18 identified?

19 A. I don't recall.

20 Q. What are your duties and  
21 responsibilities as the principal executive  
22 officer of these four retail funds?

23 A. It is to manage the finance and  
24 accounting positions.

25 Q. So at the same time you serve as the

1 WATERHOUSE - 10-19-21

2 treasurer of the advisors, you also serve as  
3 the principal executive officer of these four  
4 retail funds; correct?

5 A. Yes.

6 Q. Did you ever hold any title with  
7 respect to any other retail fund?

8 A. Not that I recall.

9 Q. During the period that you served as  
10 Highland's CFO, from time to time Highland  
11 loaned money to certain of its officers and  
12 employees; correct?

13 A. Yes.

14 Q. During the period that you served as  
15 Highland's CFO, from time to time Highland  
16 loaned money to certain --

17 A. Let me -- let me retract that,  
18 sorry, that -- you asked during the time I was  
19 CFO, Highland loaned moneys to employees. I  
20 don't -- I don't recall that during my tenure  
21 of CFO.

22 Q. You have no recollection during the  
23 time that you were the CFO of Highland of  
24 Highland ever loaning any money to any officer  
25 or director of Highland?

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2 A. I don't recall during my tenure of  
3 Highland or my -- as CFO of Highland -- yeah,  
4 if there are any loans as CFO of Highland.

5 Q. I'm just talking about officers and  
6 employees right now. You have no recollection  
7 of Highland ever making a loan to any of its  
8 officers or employees during the time that you  
9 served as CFO. Do I have that right?

10 MS. DANDENEAU: Objection to form.

11 A. So I thought you were saying  
12 officers and employees as CFO, right, so there  
13 were -- I mean, okay, yes.

14 Q. I would ask you to listen carefully  
15 to my question. If I -- if I'm not clear, let  
16 me know, but I'm really trying to be as clear  
17 as I can.

18 A. I'm listening as carefully as I can,  
19 and you are asking very specific questions in a  
20 timeline. And I'm trying to answer your  
21 questions as specifically as I can, and I  
22 apologize if -- if I'm going back. I am -- you  
23 are asking very specific questions. Thank you.

24 Q. During the period that you served as  
25 Highland's CFO, from time to time Highland



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2 loaned money to certain corporate affiliates;  
3 correct?

4 MS. DANDENEAU: Objection to form.

5 A. What are corporate affiliates?

6 Q. How about the ones that are in  
7 Highland's audited financial statements under  
8 the section entitled Loans to Affiliates. Why  
9 don't we start with those. Do you have any  
10 understanding of what the phrase "affiliates"  
11 means?

12 MS. DANDENEAU: Objection to form.

13 A. I understand what affiliates are,  
14 yet affiliates can have different meanings in  
15 different contexts, so...

16 Q. Why don't you -- why don't you tell  
17 me what your understanding of the term  
18 "affiliate" is in relation to Highland Capital  
19 Management, L.P.

20 A. Is that a -- it depends on the  
21 context.

22 Q. How about the context of making  
23 loans?

24 MS. DANDENEAU: Objection to form.

25 A. I didn't make the determination of

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2 who an affiliate was or is at the time those --  
3 I didn't -- that wasn't my job to make a  
4 determination of who an affiliate is.

5 Q. All right. So as the CFO of  
6 Highland, do you have any ability right now to  
7 tell me which companies that were directly or  
8 indirectly owned and/or controlled by  
9 Mr. Dondero in whole or in part received loans  
10 from Highland Capital Management, L.P.?

11 MS. DANDENEAU: Objection to form.

12 MS. DEITSCH-PEREZ: Objection, form.

13 A. Yes.

14 Q. Okay. Identify every entity that  
15 you can think of that was directly or  
16 indirectly owned and/or controlled by  
17 Mr. Dondero in whole or in part that received a  
18 loan from Highland Capital Management, L.P.

19 MR. RUKAVINA: Objection, legal  
20 conclusion.

21 A. NexPoint Advisors, Highland Capital  
22 Management Fund Advisors, HCM Services,  
23 Dugaboy. Sorry, I don't think -- Dugaboy  
24 doesn't fit that definition. You said owned  
25 and controlled. I don't think that that

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2 definition --

3 Q. I said owned and/or controlled.

4 A. I don't -- again, I'm not -- I'm not  
5 the legal expert. I don't think it controls --  
6 he controls Dugaboy, so again, I'm not the  
7 legal person.

8 Q. I'm not asking you for a legal  
9 conclusion, sir. I'm asking you for your  
10 knowledge, okay, as the CFO -- the former CFO  
11 of Highland Capital Management, other than  
12 NexPoint, HCMFA, and HCMF -- HCMS, can you  
13 think of any other entities that were owned  
14 and/or controlled directly or indirectly in  
15 whole or in part by Jim Dondero who received a  
16 loan from Highland Capital Management, L.P.?

17 MS. DANDENEAU: Objection to form.

18 A. HCRE.

19 Q. Any others?

20 A. That is -- that is all I can think  
21 of.

22 Q. And you're aware that from time to  
23 time while you were the CFO, Highland loaned  
24 money to Jim Dondero; correct?

25 A. Yes.

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2 Q. Okay. Can we refer to the four  
3 entities that you just named and Mr. Dondero as  
4 the affiliates?

5 A. So that would be Jim Dondero,  
6 NexPoint Advisors, Highland Capital Management  
7 Fund Advisors, and HCRE.

8 Q. And HCMS?

9 A. And HCMS, okay.

10 Q. And can we refer to the loans that  
11 were given to each of those affiliates as the  
12 affiliate loans?

13 A. Yes.

14 Q. And is it fair to say that each of  
15 the affiliates were the borrowers under the  
16 affiliate loans as we're defining the term?

17 MR. RUKAVINA: Objection, legal  
18 conclusion.

19 A. The borrowers are whoever were on  
20 the notes. I don't -- I don't know. I'm not  
21 the legal person.

22 Q. But you --

23 A. I don't know.

24 Q. You do know, as Highland's former  
25 CFO, that each of the affiliates that you have

1 WATERHOUSE - 10-19-21

2 identified tendered notes to Highland; correct?

3 MR. RUKAVINA: Hey, John, will you  
4 just give me a running objection to legal  
5 conclusion to HCM --

6 MR. MORRIS: No. No, if you want to  
7 object --

8 MR. RUKAVINA: I will object every  
9 time. Object to legal conclusion.

10 MR. MORRIS: That is fine.

11 A. Sorry, can you repeat the question?

12 Q. Are you aware that each of the --  
13 that each of the affiliates, as we have defined  
14 the term, gave to Highland a promissory note in  
15 exchange for the loans?

16 MR. RUKAVINA: Objection to the  
17 extent that calls for a legal conclusion.

18 A. I don't.

19 Q. No, you don't know that?

20 A. No, they didn't -- you said they  
21 exchanged a promissory note for a loan. I  
22 don't -- I don't understand that question, so I  
23 said no.

24 Q. At the time of the bankruptcy  
25 filing, did Highland have in its possession

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2 promissory notes that were signed by each of  
3 the affiliates?

4 A. Yes.

5 Q. To the best of your knowledge,  
6 during the time that you served as Highland's  
7 CFO, did Highland disclose to its outside  
8 auditors all of the loans that were made to  
9 affiliates?

10 MR. RUKAVINA: Objection, that calls  
11 for a legal conclusion.

12 MS. DEITSCH-PEREZ: I also couldn't  
13 hear you, John, because there was some  
14 garbling on -- on the -- on the call.

15 MR. MORRIS: Folks, I've got to tell  
16 you this is not going well, and I'm  
17 reserving my right --

18 MS. DANDENEAU: John, it was just  
19 the end of that question. It was just the  
20 end of that question. I couldn't hear it  
21 either. Sorry, if you could repeat it,  
22 please.

23 MR. MORRIS: That is less than an  
24 hour into this, but folks are trying to run  
25 out the clock, and so I'm just going to

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2 state that now.

3 MS. DANDENEAU: You know, and,  
4 Mr. Morris, I really object to that. I  
5 mean --

6 MR. MORRIS: Okay.

7 MS. DANDENEAU: -- Mr. Waterhouse  
8 just told you he's trying to listen to your  
9 questions and answer them carefully, and  
10 you have no basis for saying that.

11 MR. MORRIS: Okay.

12 MS. DANDENEAU: This does not --  
13 this is not an experienced witness, so he's  
14 trying to do the best he can.

15 Q. Mr. Waterhouse, during the time that  
16 you served as Highland's CFO, did Highland  
17 disclose to its outside auditors all of the  
18 loans that it made to each of the affiliates  
19 that you have identified?

20 MR. RUKAVINA: Objection, legal  
21 conclusion.

22 A. Yes.

23 Q. To the best of your knowledge, while  
24 you were Highland's CFO, were all of the  
25 affiliate loans described in Highland's audited

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2 financial statements?

3 MR. RUKAVINA: Objection, legal  
4 conclusion.

5 A. When an audit was performed, any  
6 loans that were made by Highland to the  
7 affiliates were disclosed to auditors.

8 Q. Are you aware of any loan that was  
9 made to any affiliate that was not disclosed to  
10 the auditors?

11 A. I'm not aware.

12 Q. To the best of your knowledge, did  
13 each of the affiliates who were --  
14 (inaudible) -- loaned from Highland execute a  
15 promissory note in connection with that loan?

16 MR. RUKAVINA: Objection, legal  
17 conclusion.

18 A. Sorry, you -- halfway through the  
19 question it got muffled.

20 Can you repeat that again?

21 Q. To the best of your knowledge, did  
22 every affiliate execute a promissory note in  
23 connection with each loan that it obtained from  
24 Highland?

25 MR. RUKAVINA: Objection, legal



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2 conclusion.

3 A. Yes.

4 Q. You are not aware of any loan that  
5 any affiliate ever obtained from Highland where  
6 the affiliate did not give a promissory note in  
7 return; is that fair?

8 A. Yes, I'm not aware.

9 Q. And to the best of your knowledge,  
10 did Highland loan to each affiliate an amount  
11 of money equal to the principal amount of each  
12 promissory note?

13 MR. RUKAVINA: Objection, legal  
14 conclusion.

15 A. Yes.

16 Q. During the time that you served as  
17 CFO, did Highland ever loan money to  
18 Mark Okada?

19 A. I -- I don't recall.

20 Q. Did you ever see any promissory  
21 notes executed by Mark Okada?

22 A. I don't recall.

23 Q. Do you know if Highland ever forgave  
24 any loan that it ever made to Mr. Okada?

25 A. I don't recall.

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2 Q. Do you recall if Mr. Okada paid back  
3 all principal and interest due and owing under  
4 any loan he obtained from Highland?

5 MS. DEITSCH-PEREZ: Objection to  
6 form.

7 MS. DANDENEAU: Objection to form.

8 A. I don't recall.

9 Q. Do you recall whether -- during your  
10 time as CFO, whether Highland ever loaned money  
11 to Jim Dondero?

12 A. Yes.

13 Q. To the best of your knowledge, did  
14 Mr. Dondero sign and deliver to Highland a  
15 promissory note in connection with each loan  
16 that he obtained from Highland?

17 A. If you are referring to the  
18 promissory notes that, you know, part of  
19 Highland's records, yes.

20 Q. Okay. You're not aware of any loan  
21 that Mr. Dondero took from Highland that wasn't  
22 backed up by -- by a promissory note with a  
23 face -- with a principal amount equal to the  
24 amount of the loan; correct?

25 A. Am I aware that Jim Dondero took a

1 WATERHOUSE - 10-19-21

2 loan?

3 Q. Without giving a -- let me ask a  
4 better question. I'm sorry, Mr. Waterhouse.

5 Are you aware of any loan that  
6 Mr. Dondero obtained from Highland where he  
7 didn't give a promissory note in return?

8 A. I'm not aware.

9 Q. During the time that you served as  
10 Highland's CFO, did Highland ever forgive any  
11 loans, in whole or in part, that it made to  
12 Mr. Dondero?

13 A. Not that I'm aware.

14 Q. At the time that you served as  
15 Highland's CFO, did Highland ever forgive any  
16 loan, in whole or in part, that it made to any  
17 affiliate as we've defined the term today?

18 A. Not that I'm aware.

19 Q. During the time that you served as  
20 Highland's CFO, did Highland ever forgive, in  
21 whole or in part, any loan that it ever made to  
22 any officer or employee?

23 A. Highland forgave loans to officers  
24 and employees. It may not have been at the  
25 time when my title was CFO.

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2 Q. Okay. And so I appreciate the  
3 distinction.

4 Is it fair to say that, to the best  
5 of your knowledge, Highland did not forgive a  
6 loan that it made to an officer or employee  
7 after 2013?

8 MS. DANDENEAU: Objection to form.

9 A. I don't recall.

10 Q. To the best of your knowledge, did  
11 Highland disclose to its auditors every  
12 instance where it forgave, in whole or in part,  
13 a loan that it had made to one of its officers  
14 or employees?

15 A. No.

16 Q. Can you think of -- can you -- can  
17 you identify any loan to an officer or employee  
18 that was forgiven by Highland, in whole or in  
19 part, that was not disclosed to Highland's  
20 outside auditors?

21 A. Look, I don't recall all of the  
22 loans and the loan forgiveness. I just know as  
23 part of the audit process there is a  
24 materiality concept.

25 So if there were loans to employees

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2 that were of -- you know, that were deemed  
3 immaterial, those items may not have been  
4 disclosed by the team to the auditors.

5 Q. I appreciate that.

6 Do you have an understanding as to  
7 what the level of materiality was?

8 A. I don't recall.

9 Q. As the CFO of Highland, to the best  
10 of your knowledge, did Highland disclose to its  
11 outside auditors every loan that was forgiven,  
12 in whole or in part, that was material as that  
13 term was defined by the outside auditors?

14 A. Yes.

15 Q. And do you recall where -- do you  
16 recall where the definition of materiality can  
17 be found for -- for this particular purpose?

18 MS. DANDENEAU: Objection to form.

19 A. No. You -- I don't determine  
20 materiality.

21 Q. Okay. I'm just asking you if you  
22 can help me understand where it is, but I think  
23 we will find it in a few minutes.

24 You are aware that Highland has  
25 commenced lawsuits against each of the

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2 affiliates, as we've defined the term, to  
3 collect under certain promissory notes; is that  
4 right?

5 A. Yes.

6 Q. And are you familiar with the notes  
7 that are issue -- at issue in the lawsuits?

8 MS. DANDENEAU: Objection to form.

9 A. Generally familiar.

10 Q. Can we refer to the lawsuits that  
11 Highland has commenced against the affiliates  
12 collectively as the lawsuits?

13 A. Yes. And, again, the affiliates are  
14 NexPoint, HCMFA, HCMS, and HCRE.

15 Q. And Mr. Dondero?

16 A. Okay. See, that is a new -- and now  
17 Mr. Dondero is included in your affiliate  
18 definition.

19 Q. I just --

20 A. I thought affiliates -- I thought  
21 affiliates were just the four prior entities,  
22 so I just want to be clear.

23 Q. I appreciate that. So let's --  
24 let's keep them separate and let's refer to the  
25 four corporate entities as the affiliates, and

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2 Mr. Dondero we will call Mr. Dondero. Okay?

3 A. Okay. Thank you. As you can see,  
4 Mr. Morris, there is a lot of entities -- a lot  
5 here. I just want to be clear.

6 Q. Okay. Now, the affiliates of  
7 Mr. Dondero signed promissory notes that are  
8 not subject to the lawsuit.

9 Do you understand that?

10 MS. DANDENEAU: Objection to form.

11 A. The affiliates and Mr. Dondero  
12 signed --

13 Q. You know what? I will skip it.  
14 That is okay. Okay.

15 From time to time while you were  
16 Highland's CFO, payments were applied against  
17 principal and interests that were due under the  
18 notes that were tendered by the affiliates and  
19 Mr. Dondero; correct?

20 MR. RUKAVINA: Objection to the  
21 extent that calls for a legal conclusion.

22 A. Yes.

23 Q. Did Highland have a process where --  
24 whereby payments would be applied against  
25 principal and interest against the notes that

1 WATERHOUSE - 10-19-21

2 were given by the affiliates and Mr. Dondero?

3 A. Yes.

4 Q. Can you describe the process for me?

5 A. The process, payment should be  
6 applied as laid out in the -- in the promissory  
7 note.

8 Q. From time to time were payments made  
9 that were not required under the promissory  
10 notes?

11 MS. DANDENEAU: Objection to form.

12 A. Yes.

13 Q. Who was responsible for deciding  
14 when and how much the payments would be made  
15 with respect to each of the notes that were  
16 issued by the affiliates and Mr. Dondero?

17 A. Who was responsible for deciding how  
18 much was paid prior to the due date?

19 Q. Yes.

20 A. I don't know.

21 Q. Did you approve of each payment that  
22 was made against principal and interest on the  
23 notes that were given by the affiliates and  
24 Mr. Dondero?

25 MS. DANDENEAU: Objection to form.



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2 A. Did I approve the payments? I  
3 approve -- I approve -- if there was cash -- if  
4 there was cash being repaid on a note payment,  
5 yes, I approved in the general sense of being  
6 made aware of the payment and the amount.

7 Q. And are you the person who  
8 authorized Highland's employees to effectuate  
9 those payments?

10 A. Yes.

11 Q. When you gave the instruction to  
12 effectuate the payment, did you obtain  
13 Mr. Dondero's prior approval?

14 A. I mean, it -- I mean, it -- it  
15 depends.

16 Q. Can you think of any instance where  
17 you directed Highland's employees to make a  
18 payment of principal or interest against any  
19 note that was tendered by an affiliate or  
20 Mr. Dondero that Mr. Dondero did not approve of  
21 in advance?

22 A. I can't recall specifically.

23 Q. Can you identify -- withdrawn.

24 Did Mr. Dondero ever tell you that a  
25 payment that was made against principal and

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2 interest due under one of the notes that was  
3 tendered by an affiliate or himself should not  
4 have been made?

5 A. Yes.

6 Q. Can you identify the payment for me?

7 A. It would be for -- for NexPoint  
8 Advisors.

9 Q. Okay. And when did Mr. Dondero tell  
10 you that a payment that you had initiated on  
11 behalf of NexPoint should not have been made?

12 A. I wasn't initiating payment. It was  
13 in the context of the -- I think you used this  
14 term, "the advisors," so NexPoint Advisors and  
15 Highland Capital Management Fund Advisors had  
16 overpaid on certain agreements with Highland  
17 Capital Management, L.P. And as a part of that  
18 process, the advisors -- what I was told at the  
19 time were in talks and negotiations and  
20 discussions with Highland Capital Management,  
21 L.P., on offsets in relation to those  
22 overpayments.

23 Q. When did this conversation take  
24 place?

25 MS. DANDENEAU: Objection to form.

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2 A. I don't recall specifically.

3 Q. Do you recall what year it was?

4 A. Yes.

5 Q. What year did the conversation with  
6 Mr. Dondero take place that you just described?

7 A. 2020.

8 Q. Okay. Do you remember if it was  
9 December 2020?

10 A. It -- it -- I don't -- I don't  
11 recall what month specifically, but it would  
12 have been November or December.

13 Q. And we're talking here about a  
14 payment of principal and/or interest that was  
15 due -- withdrawn.

16 We're talking here about a payment  
17 of principal and interest that was applied  
18 against NexPoint's note; correct?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall what that payment  
21 consisted of.

22 Q. Is it possible that the payment you  
23 have in mind related to the shared services  
24 agreement?

25 MS. DANDENEAU: Objection to form.

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2 A. No.

3 Q. Are you certain that the payment --  
4 that the payment that you have in mind related  
5 to the promissory note that NexPoint issued in  
6 favor of Highland?

7 MS. DANDENEAU: Objection to form.

8 A. Yes.

9 Q. Okay. Other than that one payment,  
10 can you identify any other instance where  
11 Mr. Dondero told you that a payment should not  
12 have been applied against principal and  
13 interest under any promissory note tendered by  
14 any affiliate or Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Objection to  
17 form.

18 A. Not that I recall.

19 Q. Thank you very much.

20 Do you know if Mr. Dondero approved  
21 in advance of each loan made to each affiliate  
22 and himself during the time that you were the  
23 CFO?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

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2 A. Yes, generally.

3 Q. Can you identify any loan that was  
4 ever made to an affiliate or to Mr. Dondero  
5 that Mr. Dondero did not approve of in advance?

6 A. Other than the ones that are in  
7 dispute, I'm not aware.

8 Q. Do you believe that Mr. Dondero did  
9 not approve of each of the loans that are in  
10 dispute in advance of the time that the loan  
11 was made?

12 MS. DANDENEAU: Objection to form.

13 A. Given what is in the dispute, you  
14 know, and -- and -- and the way things might --  
15 yeah, I mean...

16 Q. I am not asking about the dispute,  
17 and it was probably my mistake to follow you  
18 there.

19 Were you aware of every loan made by  
20 Highland to each of its affiliates and  
21 Mr. Dondero while you were the CFO at the time  
22 each loan was made?

23 A. Was I aware of every loan, yes.

24 Q. Okay. And if you put yourself back  
25 in time, do you recall that any of the loans

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2 that were made to one of the affiliates or  
3 Mr. Dondero during the time that you were the  
4 CFO was made without Mr. Dondero's prior  
5 knowledge and approval?

6 A. Not that I recall.

7 Q. Thank you. In fact, do you -- as  
8 the CFO, would you have allowed Highland to  
9 loan money to an affiliate or to Mr. Dondero  
10 without obtaining Mr. Dondero's prior approval?

11 MS. DANDENEAU: Objection to form.

12 A. I can't -- there was so many times  
13 over the years, I can't speak for every single  
14 one, but generally, yes, I -- I spoke to him.

15 Q. You -- you never -- you never --  
16 withdrawn. I will just take that.

17 Can you recall any payment that was  
18 ever made against principal and interest on a  
19 note that was issued in favor of Highland by an  
20 affiliate or Mr. Dondero that you personally  
21 did not know about in advance?

22 A. There are so many through the years,  
23 I don't -- I don't -- I don't recall every  
24 single one.

25 Q. Okay. Can you identify any payment

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2 that was made against principal and interest on  
3 any note tendered by any affiliate or  
4 Mr. Dondero that you didn't know about in  
5 advance?

6 A. I don't recall.

7 Q. Other than Mr. Dondero -- withdrawn.

8 Did anybody at Highland have the  
9 authority to make a payment against principal  
10 and interest due under a loan given to the  
11 affiliates and Mr. Dondero without your  
12 knowledge and approval?

13 MS. DANDENEAU: Objection to form.

14 A. Sorry, there was -- to make a  
15 payment on an affiliate loan, what you are  
16 saying would it require my knowledge and  
17 approval, yes.

18 Q. Okay. I appreciate that. Thank  
19 you.

20 Did anybody at Highland have the  
21 authority, to the best of your knowledge, to  
22 effectuate a loan to an affiliate without  
23 Mr. Dondero's prior knowledge and approval?

24 MS. DANDENEAU: Objection to form.

25 A. I can't speak for all, but

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2 generally, yes.

3 Q. Did you personally communicate with  
4 Mr. Dondero to let him know each time a payment  
5 of principal or interest was being made against  
6 any note that was tendered by an affiliate or  
7 Mr. Dondero to Highland?

8 A. I don't -- are you saying, did I let  
9 Mr. Dondero know if a payment was made on any  
10 affiliate or loan to Mr. Dondero? I mean,  
11 not -- not every -- no.

12 Q. Let me ask it this way: Did you  
13 have a practice of informing Mr. Dondero when  
14 payments were made against principal and  
15 interest on any note that was tendered by an  
16 affiliate or Mr. Dondero?

17 MS. DEITSCH-PEREZ: Objection to  
18 form.

19 MS. DANDENEAU: Objection to form.

20 A. No, I did not.

21 Q. Did Mr. Dondero ever tell you that a  
22 payment of principal or interest had been made  
23 against a note that was tendered by an  
24 affiliate or himself that he had been unaware  
25 of?



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2 A. Not that I recall.

3 Q. Are you aware that Mr. Dondero and  
4 the affiliates -- withdrawn.

5 Are you aware that Mr. Dondero  
6 NexPoint, HCRE, and HCMS all contend that they  
7 do not have to pay on any of the notes they  
8 issued because they are subject to an oral  
9 agreement between Mr. Dondero and Nancy  
10 Dondero, in her capacity as the trustee of the  
11 Dugaboy Investment Trust?

12 MS. DANDENEAU: Objection to form.

13 A. I didn't -- I didn't -- I didn't  
14 know that it was all notes.

15 Q. Okay. Are you -- did you ever learn  
16 that there was an oral agreement between Jim  
17 Dondero and Nancy Dondero pertaining to any  
18 notes issued by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the  
20 form.

21 A. Yes.

22 Q. Do you have any understanding as to  
23 the terms of that agreement?

24 A. Yes.

25 Q. What is your understanding of the

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2 terms of the agreement?

3 A. That there were certain milestones  
4 that had to be reached.

5 Q. Do you have any understanding of the  
6 terms of the agreement between Mr. Dondero and  
7 Nancy Dondero concerning any of the notes  
8 issued by the affiliates or Mr. Dondero other  
9 than that there have to be milestones reached?

10 MS. DEITSCH-PEREZ: Object to the  
11 form.

12 A. There are milestones, I found out  
13 yesterday, or there was some --

14 MS. DANDENEAU: Okay. I'm just  
15 going to object to the extent that you  
16 learned anything in conversations with  
17 counsel, please don't reveal -- that is  
18 privileged, and don't reveal any privileged  
19 communications.

20 THE WITNESS: Okay.

21 A. So I'm not aware of anything else.

22 Q. Do you know what the milestones  
23 were?

24 MS. DANDENEAU: Objection to form.

25 A. I don't.

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2 Q. Do you know anything about -- do you  
3 know what promissory notes the agreement  
4 covered?

5 A. I don't.

6 Q. Do you know if -- if Jim and Nancy  
7 Dondero entered into one agreement or more than  
8 one agreement?

9 MS. DEITSCH-PEREZ: Object to the  
10 form.

11 A. I don't know.

12 Q. Do you know if the agreement is in  
13 writing?

14 A. I don't know.

15 Q. How did you learn of the existence  
16 of the agreement?

17 MS. DANDENEAU: Objection to form.  
18 Again --

19 A. I don't -- I don't recall who told  
20 me.

21 Q. You have no recollection of who told  
22 you about this agreement between Jim and Nancy  
23 Dondero?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

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2 A. I don't recall.

3 Q. Do you recall how you learned of the  
4 agreement?

5 Was it in a meeting? Was it in a  
6 phone call? Was it in an email?

7 A. I don't recall.

8 Q. Do you recall when you learned of  
9 the agreement?

10 A. Not specifically.

11 Q. Do you recall what year you learned  
12 of the agreement?

13 A. In -- look, I mean, there are so  
14 many notes. I may be getting -- I believe it  
15 was 2020.

16 Q. All right. I'm not asking about  
17 notes, sir. I'm asking about the agreement  
18 that you testified you knew about between Jim  
19 and Don- -- Nancy Dondero. Okay.

20 Do you understand my question now?  
21 Should I ask my question again?

22 A. Yeah, sure. Go ahead.

23 Q. I'm going to use the word  
24 "agreement" to refer to the agreement that  
25 Mr. Dondero and Nancy Dondero entered into

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2 where you understood that certain milestones  
3 had to be reached. Okay?

4 A. Uh-huh.

5 MS. DANDENEAU: Objection.

6 MS. DEITSCH-PEREZ: Object to the  
7 form.

8 MR. MORRIS: Just defining a term,  
9 what is the objection.

10 MS. DEITSCH-PEREZ: The objection --

11 MR. MORRIS: I will move on. I will  
12 move on.

13 MS. DEITSCH-PEREZ: John --

14 Q. Sir, are you okay with that  
15 definition of agreement?

16 A. Okay.

17 Q. Okay. So you don't recall who --  
18 who informed you of the existence of the  
19 agreement; is that right?

20 A. I don't recall.

21 Q. You don't recall who told you the  
22 terms of the agreement.

23 Do I have that right?

24 A. Correct.

25 Q. And you don't recall if you learned

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2 about the agreement in a meeting, through an  
3 email, or through a phone call.

4 Do I have that right?

5 A. I don't recall.

6 Q. Can you tell me when you learned of  
7 the agreement?

8 A. I don't -- I don't -- I don't  
9 remember specifically.

10 Q. Can you tell me if you learned of  
11 the agreement before or after the petition  
12 date?

13 A. It would have been -- it would have  
14 been after.

15 Q. Can you tell me if you learned of  
16 the agreement before or after January 9th,  
17 2020?

18 A. It would have been after.

19 Q. Can you tell me if you learned of  
20 the agreement before or after you left Highland  
21 Capital Management in February of 2021?

22 A. I don't -- I don't -- I don't know.

23 Q. It is possible that you learned of  
24 it while you were a Highland employee.

25 Do I have that right?

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2 A. I don't remember the -- I mean, it  
3 was sometime in 2021. I don't remember when.

4 Q. All right. So to the best of your  
5 recollection, it was in 2021 but you don't  
6 recall if it was before or after you ceased to  
7 be a Highland employee.

8 Do I have that right?

9 A. Yeah, I mean, it was -- it was  
10 likely after I was -- after I left Highland  
11 because, if I put myself back into the last  
12 days of -- of 2021, it was -- you know, the  
13 communications with Mr. Dondero were -- were --  
14 were -- there weren't as many communications  
15 because of the circumstances.

16 Q. And so based on that you believe  
17 that it is most likely that you learned of this  
18 agreement sometime after you left Highland  
19 employment?

20 A. I wouldn't use the term "most  
21 likely." I don't recall specifically. I don't  
22 recall.

23 Q. Do you recall ever telling Jim Seery  
24 about this agreement?

25 A. No, I don't -- I didn't tell

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2 Jim Seery.

3 Q. Did you tell anybody at DSI about  
4 this agreement?

5 A. No.

6 Q. Did you tell any of Highland's  
7 independent directors about this agreement?

8 A. No.

9 Q. Did you tell anybody at Pachulski  
10 Stang Ziehl & Jones about this agreement?

11 A. No.

12 Q. Did you tell any employee of  
13 Highland about this agreement?

14 A. No.

15 MS. DANDENEAU: Mr. Morris, it has  
16 been an hour and a half. Is this a good  
17 time for a break?

18 MR. MORRIS: Sure.

19 Q. Mr. Waterhouse, I will just remind  
20 you that during the break please don't speak  
21 with anybody about the deposition, the  
22 substance of your testimony or anything else  
23 concerning the deposition. Okay?

24 A. Yes.

25 MR. MORRIS: So it is 11:02. We're



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2 at 11:02 your time. Let's come back, I  
3 guess, at 15 -- at 11:15 your time.

4 VIDEOGRAPHER: We're going off the  
5 record at 11:02 a.m.

6 (Recess taken 11:02 a.m. to 11:20 a.m.)

7 VIDEOGRAPHER: We are back on the  
8 record at 11:20 a.m.

9 Q. Mr. Waterhouse, did you speak with  
10 anybody during the break about this deposition?

11 A. No.

12 MS. DANDENEAU: Other than -- other  
13 than his counsel.

14 Q. Did you speak to your counsel about  
15 the substance of your deposition today?

16 A. No, I didn't bring it up.

17 Q. I didn't ask you if you brought it  
18 up. I asked you if you had any conversation  
19 with your lawyer about the substance of your  
20 deposition.

21 MS. DANDENEAU: Yes, he did.

22 Q. Can you tell me what the -- you  
23 discussed?

24 MS. DANDENEAU: No, I object to  
25 that. He's not going to answer. That is a

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2 privileged conversation.

3 MR. MORRIS: So I just want to make  
4 sure that I understand. During the break  
5 you spoke with your client about the  
6 substance of this deposition; is that  
7 right?

8 MS. DANDENEAU: Yes, John.

9 MR. MORRIS: And you refuse -- you  
10 refuse to let your client tell me what was  
11 discussed; is that right?

12 MS. DANDENEAU: That's correct.

13 MR. MORRIS: You know, I had given  
14 the instruction prior to the break not to  
15 speak with counsel. I would have  
16 appreciated --

17 MS. DANDENEAU: No, you didn't --  
18 actually, that is not true, Mr. Morris.  
19 You said not to speak with anyone. We  
20 never have interpreted that to mean  
21 conversations with counsel. That's never  
22 been -- I have never, ever heard that  
23 instruction.

24 MR. MORRIS: Okay. We will -- we  
25 will -- we will deal with it when and if we

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2 have to.

3 Q. Mr. Waterhouse, after learning about  
4 the agreement, did you ask anybody if the  
5 agreement was reflected in a writing?

6 MS. DANDENEAU: Objection to form.

7 A. No.

8 Q. Did you ask anybody if the terms of  
9 the agreement were memorialized anywhere?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: What is the --

12 A. No.

13 MS. DANDENEAU: Well, because you  
14 keep talking about this agreement and I --  
15 I -- I think, Mr. Morris, that is really  
16 not clear what you mean by "the agreement."  
17 And maybe you can just go back and restate  
18 what that is.

19 MR. MORRIS: Okay. Your client has  
20 agreed with me twice on the definition, but  
21 I will try one more time.

22 Q. Mr. Waterhouse, do you understand  
23 that when I use the term "agreement," I'm  
24 referring to the agreement between Jim and  
25 Nancy Dondero concerning certain promissory

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2 notes where you learned that one of the terms  
3 of the agreement was milestones reached?

4 A. Okay.

5 Q. And did you understand that that was  
6 the -- the agreement that we were referring to  
7 every time we used the word "agreement" in this  
8 deposition?

9 A. I don't know anything about this  
10 agreement. So, look, I do -- it -- I don't  
11 know whether --

12 Q. Let's -- let's try this again.

13 A. Yeah. Look, I don't know what this  
14 agreement relates.

15 MS. DEITSCH-PEREZ: John, John --

16 Q. Let me try --

17 MS. DEITSCH-PEREZ: John, please let  
18 the witness finish.

19 MR. MORRIS: Please stop. Please  
20 stop. Please stop talking.

21 MS. DEITSCH-PEREZ: No, you stop.  
22 Let the witness --

23 MR. MORRIS: Stop talking.

24 MS. DEITSCH-PEREZ: -- finish -- you  
25 interrupted him.

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2 MR. MORRIS: You know what, you  
3 guys, this is really wrong. It is really,  
4 really wrong. Okay?

5 I had the witness agree not once,  
6 but twice to the definition of agreement.  
7 Okay? I'm going to try and do it a third  
8 time.

9 MS. DANDENEAU: No, but, please,  
10 John, really --

11 MR. MORRIS: No, please stop  
12 talking. Please. It is my deposition.  
13 Object to questions.

14 MS. DANDENEAU: No, but also you  
15 instructed him that -- that if you were  
16 going -- if you were interrupting him, that  
17 he should remind you that you're  
18 interrupting him and -- and --

19 MR. MORRIS: Let him do that. Let  
20 him do that.

21 MS. DANDENEAU: Okay. Well, you --

22 MR. MORRIS: Please stop talking.

23 A. Okay. I don't know any of the  
24 details of these agreements. I don't know  
25 anything about them. I heard -- someone -- I

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2 don't know who, I don't know when, as you  
3 asked, sometime in '21, someone told me about  
4 this -- or I don't honestly know -- I don't  
5 even recall exactly how I was made aware of  
6 this, but I was. I don't know -- I don't know  
7 any of these details, and I'm getting -- again,  
8 there is, you know, I -- I -- I had a passing  
9 conversation with -- with Jim at some point  
10 on -- on some -- on the executive comp, and I'm  
11 getting confused of what is what, because  
12 again, I don't know any of these details.

13 Q. Okay. Let me try again,  
14 Mr. Waterhouse, and I apologize.

15 Are you aware of any agreement  
16 between Jim Dondero and Nancy Dondero  
17 concerning any promissory note that was given  
18 to Highland by any affiliate or Mr. Dondero?

19 MS. DEITSCH-PEREZ: Object to the  
20 form.

21 A. I've heard of an agreement. That  
22 is -- that is -- I mean, if you are using aware  
23 as heard, sure.

24 Q. And you understand that one of the  
25 terms of the agreement is that it was based on

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2 milestones that had to be reached; is that  
3 right?

4 MS. DANDENEAU: Objection to form.

5 A. That was one of the words that was  
6 used when I heard about it, yes.

7 Q. And when you heard about this  
8 agreement that had a term in it concerning  
9 milestones reached, did you ask the person who  
10 was telling you about the agreement whether or  
11 not it was in writing?

12 A. I did not.

13 Q. Did you ask any questions at all?

14 MS. DANDENEAU: Objection to form.

15 A. Not that I recall.

16 Q. But do you understand that going  
17 forward, we're going to refer to the agreement  
18 as the agreement that you just described that  
19 you were --

20 MS. DANDENEAU: Object to the form.

21 A. Yes.

22 Q. Okay. You don't have any personal  
23 knowledge concerning the terms of the  
24 agreement; correct?

25 MS. DEITSCH-PEREZ: Object to the

1 WATERHOUSE - 10-19-21

2 form.

3 Q. You can answer.

4 A. I don't -- I heard about the  
5 agreement. I don't know anything -- I heard  
6 there was an agreement. That is -- again, as I  
7 testified before -- I said before, heard about  
8 it, don't know the details. I believe it was  
9 sometime this year.

10 Q. Do you have any personal knowledge  
11 about the terms of the agreement, sir?

12 MS. DANDENEAU: Objection to form.

13 A. Other than what I have previously  
14 discussed, I don't -- I don't know.

15 Q. Did -- did Mr. Dondero tell you  
16 about the existence of the agreement?

17 A. I don't recall.

18 Q. Do you recall the source of your  
19 information when you learned about the  
20 agreement?

21 A. No, I don't -- I don't recall. I  
22 don't remember. I just -- I heard about it  
23 generally. I don't remember -- I don't  
24 remember who, how, if, how. I don't remember.

25 Q. You know, Mr. Waterhouse, I just



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2 want to be clear that I never would have asked  
3 you to appear at this deposition if your name  
4 hadn't been included in responses to discovery  
5 as to somebody with knowledge about the -- who  
6 was told about the existence of the agreement.

7 That is what prompted me do this,  
8 and I really do feel compelled to tell you that  
9 I otherwise would never have called you as a  
10 witness. So I regret that you're being put  
11 through this today. I had no intention of  
12 burdening you or taking your time, but that is  
13 the reason that we issued the subpoena is  
14 because certain of the defendants identified  
15 you as somebody --

16 MS. DEITSCH-PEREZ: Mr. Morris, you  
17 are here to ask questions, not to have --

18 MR. MORRIS: I feel badly for the  
19 guy. I really do.

20 MS. DEITSCH-PEREZ: I'm sure you do.

21 MR. MORRIS: I do. Stop.

22 MS. DEITSCH-PEREZ: You stop.

23 MR. MORRIS: I'm allowed.

24 MS. DEITSCH-PEREZ: No, you're not  
25 allowed to have a chat with the witness.

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2 Q. Okay. Well, I hope that you  
3 appreciate what I'm saying here,  
4 Mr. Waterhouse.

5 MS. DANDENEAU: All right. Let's go  
6 ahead and ask questions, and again, you're  
7 entitled to probe his -- his knowledge  
8 of -- whatever knowledge he has about  
9 this -- this agreement and --

10 MR. MORRIS: That is what I'm doing.

11 MS. DANDENEAU: -- he will answer  
12 the questions to the best that he can.

13 MR. MORRIS: That is what I'm doing.

14 Q. Mr. Waterhouse, I take it you do not  
15 know which promissory notes issued by which  
16 affiliates or Mr. Dondero are the subject of  
17 this agreement; do I have that right?

18 A. Yes, I don't -- I don't know.

19 Q. Do you know of any way to determine  
20 which promissory notes issued by the affiliates  
21 and Mr. Dondero are the subject of this  
22 agreement other than asking Jim or Nancy  
23 Dondero?

24 MS. DANDENEAU: Objection to form.

25 A. I don't know.

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2 Q. Did you ever make --

3 A. I don't know anything about these  
4 agreements.

5 Q. Did you ever make any effort to  
6 determine which promissory notes are subject to  
7 this agreement?

8 A. No.

9 Q. Did you ever ask anybody which  
10 promissory notes are subject to this agreement?

11 A. No.

12 Q. Do you know if there is a list  
13 anywhere of the promissory notes that are  
14 subject to this agreement?

15 A. I'm not aware.

16 Q. Have you ever seen the terms of the  
17 agreement written down anywhere?

18 A. No.

19 Q. Have you ever asked anybody whether  
20 the terms of the agreement were written down  
21 anywhere?

22 A. I have not.

23 Q. Did learning about the agreement  
24 cause you to do anything in response?

25 MS. DANDENEAU: Objection to form.

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2 A. No.

3 Q. Did anybody ever describe to you the  
4 nature of the milestones that you referred to  
5 earlier?

6 A. No, I don't -- I don't have any  
7 details of this.

8 Q. That is fine.

9 PricewaterhouseCoopers served as  
10 Highland's outside auditors prior to the  
11 petition date; correct?

12 A. Yes.

13 Q. You refer to PricewaterhouseCoopers  
14 as PwC?

15 A. Yes.

16 Q. PricewaterhouseCoopers audited  
17 Highland's financial statements on an annual  
18 basis; correct?

19 A. During my -- during my time as -- as  
20 CFO, yes, PricewaterhouseCoopers was the  
21 auditor.

22 Q. Do you know why Highland had its  
23 annual financial statements audited each year?

24 A. Generally.

25 Q. Tell me your general understanding

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2 as to the reason why Highland had its annual  
3 financial statements audited each year.

4 A. From -- from time to time, they were  
5 used -- or asked for, as part of diligence or  
6 transactions or -- or things of that nature.

7 Q. And were they given to third parties  
8 for purposes of diligence or transactions from  
9 time to time?

10 A. As far as I'm aware, yes.

11 Q. And was it your understanding as the  
12 CFO that the third parties who received the  
13 financial statements in diligence or  
14 transactions was going to rely on those?

15 MS. DANDENEAU: Objection to form.

16 A. I don't know -- I don't know gen --  
17 I don't know specifically what they were going  
18 to rely on. You know, we would get requests  
19 for audited financial statements. I don't know  
20 what they were relying on.

21 Q. And --

22 A. You would have to ask them.

23 Q. Did you personally play a role in  
24 PwC's annual audit and the conduct of the  
25 audit?

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2 MS. DANDENEAU: Objection to form.

3 A. During my tenure as CFO, I played a  
4 very minimal role.

5 Q. What was the minimal role that you  
6 played?

7 A. You know, again, it was -- it was to  
8 check in with the team, to make sure that, you  
9 know, audit -- the deadlines were being hit,  
10 information was being presented to the auditors  
11 in a -- in a timely fashion, but, you know,  
12 other than that, it was a very capable team  
13 that are still current employees of Highland  
14 and, you know, they -- they conducted 99  
15 percent of -- look, I don't want to give  
16 percentages. I mean, this is -- but I -- I --  
17 I played a minimal role towards the end.

18 Before during my earlier years as  
19 CFO, I did more, and then as time went on, I  
20 did less in it.

21 Q. Okay. Was there a person at  
22 Highland who was responsible for overseeing  
23 Highland's participation in PwC's audit during  
24 the time that you were the CFO?

25 A. Yeah. I mean, there was -- there

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2 was a -- there was a point -- it varies. It  
3 varies by year, in function, in time and, you  
4 know, depending on the request, but yes, I  
5 mean, there is -- there is -- there is  
6 generally a point person of communication.

7 Q. And who was the point person from  
8 2016 until the time you left Highland?

9 A. I don't -- I don't know  
10 specifically, but it would have been, you  
11 know -- you know, someone on the corporate  
12 accounting team.

13 Q. And was there a head of the  
14 corporate accounting team?

15 A. Yes, so -- yes.

16 Q. Who was the head of corporate  
17 accounting for the five years prior to the time  
18 you left Highland?

19 A. I don't -- if you're asking from  
20 2016 on, I don't -- it was Dave Klos, but,  
21 again, there was -- there was changes to the  
22 team and the reporting structure. I don't  
23 remember exactly when that happened during --  
24 you know, over the last -- since 2016.

25 Q. Did the folks who participated and

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2 ran the audit all report to you, directly or  
3 indirectly?

4 A. Yes.

5 Q. And did you have any responsibility  
6 for making sure that the audit report was  
7 accurate before it was finalized?

8 A. Yeah. I mean, you know, that --  
9 that is -- my responsibility to the auditors  
10 was -- again, is -- and the CFO is to -- we are  
11 providing accurate financial statements; right?

12 And -- and -- and as part of any  
13 audit, we disclose all relevant information as  
14 part of any audit.

15 Q. Okay. And as the CFO, did you take  
16 steps to make sure that the audit report was  
17 accurate?

18 A. I mean, I would say in a general  
19 sense, yes. But, again, I mean, I had a  
20 very -- I had a very capable and competent  
21 team. I wasn't managing them.

22 You know, part of what I do is I let  
23 the team -- I want managers to grow. I want  
24 managers to have rope. And that is -- you  
25 know, I'm not a stand-behind-you type of guy.



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2 If you -- if you talk to my team members, I'm  
3 not micromanaging people. I want people to  
4 learn and grow in their function so they can go  
5 on and do bigger and better things with their  
6 careers.

7 And so, yes, generally I was  
8 responsible for it, but I wanted the team to  
9 learn and grow and be responsible for the bulk  
10 of the audit.

11 Q. Did you personally review each audit  
12 report before it was finalized to satisfy  
13 yourself that it was accurate?

14 A. I don't -- I don't recall, you know,  
15 for every single -- we're talking 2016, there  
16 would have been three years, 2016 to '17, '18.  
17 I don't -- we're -- we're going back  
18 five years-plus. I don't -- you know, I don't  
19 recall.

20 Q. Did you have a practice that you  
21 employed to make sure that you were satisfied  
22 that Highland's audit reports were true and  
23 accurate to the best of your knowledge?

24 A. I mean, our -- the practice was set  
25 up with our -- the -- the practice to put

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2 together accurate audited or accurate financial  
3 statements is to your control environment.

4 So, you know, the -- so the practice  
5 was to maintain a stable control environment  
6 which then the output is -- is accurate  
7 financial statements.

8 So -- so, you know, if I was  
9 comfortable that the control environment was  
10 operating, then, you know, that would dictate  
11 how I would -- you know, what I might or might  
12 not do in a given year.

13 Q. Okay. Do you recall ever being  
14 uncomfortable with the control environment  
15 during the period that you served as CFO?

16 A. Yeah. I mean, look, yes, there are  
17 times -- you know, nothing is perfect. So  
18 there were -- there were times when, yes, you  
19 know -- there are times I learned I was  
20 uncomfortable with the control environment, and  
21 that is part of the management of the process  
22 and having, you know -- and -- and working  
23 through whatever obstacles present themselves.

24 Q. Okay. Were you ever uncomfortable  
25 with the control process as it related to

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2 reporting and disclosures of loans to  
3 affiliates and Mr. Dondero?

4 MS. DANDENEAU: Objection to form.

5 A. I don't -- I don't recall --

6 Q. So you don't recall --

7 A. -- the --

8 MS. DANDENEAU: Mr. Morris --

9 A. I don't recall being uncomfortable.

10 But, again, we're going back several years. I  
11 don't -- you know, the practice in an audit is  
12 to disclose all information to the auditors.

13 And I don't -- I don't recall.

14 Q. As part of the process of the audit,  
15 did you sign what is sometimes referred to as a  
16 management representation letter?

17 A. Yes.

18 MR. MORRIS: Can we put up on the  
19 screen a document that we have premarked as  
20 Exhibit 33.

21 (Exhibit 33 marked.)

22 MS. DANDENEAU: Mr. Morris, that is  
23 not in the binder; correct?

24 MR. MORRIS: Correct.

25 Q. So you will see, Mr. Waterhouse,

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2 this is a letter dated June 3rd. And if we  
3 could go to the signature page.

4 And do you see that you and  
5 Mr. Dondero signed this document?

6 A. Yes.

7 Q. That is your signature; right?

8 A. Yes.

9 MR. MORRIS: Okay. Can you go back  
10 to the top.

11 MS. DANDENEAU: Mr. Morris, can you  
12 have somebody post this in the chat so that  
13 we have can have a copy of this, please.

14 MR. MORRIS: Yeah, sure. Asia, can  
15 you do that, please.

16 Q. Okay. Do you see at the bottom of  
17 the second paragraph there is a reference to  
18 materiality?

19 A. Yes.

20 Q. Okay. It says, Materiality used for  
21 purposes of these representations is  
22 \$1.7 million.

23 Do you see that?

24 A. I do.

25 Q. And did PwC set that level of

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materiality?

A. Yes.

Q. And for purposes of the audit, did PwC set the level of materiality each year?

A. Yes.

Q. Did that number change over time?

A. I'm not aware of what materiality is every single year, so -- but, you know, this number would likely fluctuate.

Q. Okay. I'm going to go back to a question I asked you earlier today. And that is in connection -- this letter is issued in connection with the audit for the period ending 12/31/2018; correct?

A. Yes.

Q. Okay. And is it fair to say that if any -- actually, withdrawn. I'm going to take it outside of this.

If Highland ever forgave the loan to any affiliate or any of its officers or employees, in whole or in part, to the best of your knowledge, would that forgiveness have been disclosed in the audited financial statements if it exceeded the level of

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2 materiality that PwC established?

3 MS. DANDENEAU: Objection to form.

4 A. So, again, during my tenure as CFO,  
5 and -- Highland -- it was -- it is required to  
6 disclose any affiliate loans that are in excess  
7 of materiality.

8 Now, the forgiveness of those loans  
9 may or may not -- I mean, since materiality  
10 fluctuates every year, a -- you know, if a loan  
11 was forgiven, it may or may not, you know --  
12 and, look, I would want to consult the guidance  
13 around this.

14 It is not something we do -- you  
15 know, it is not -- you know, GAAP can be and  
16 disclosures can be very specialized so, again,  
17 we want to consult the guidance. But we would  
18 see if and what would need to be disclosed if  
19 it were deemed immaterial.

20 Q. Did you and Mr. Dondero sign  
21 management representation letters of this type  
22 in each year in which you served as Highland's  
23 CFO?

24 A. I -- I -- I will speak for myself.  
25 I signed them. There may have been others that

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2 signed as well. I don't -- I don't recall.

3 Q. But to the best of your knowledge,  
4 you, personally, signed a management  
5 representation letter in connection with  
6 Highland's audit each year that you served as  
7 the CFO; correct?

8 A. I would say generally speaking,  
9 Mr. Morris. I don't recall for every single  
10 year, you know, generally, but I would want to  
11 refer to all the rep letters and see who signed  
12 them.

13 Q. Do you recall Highland having its  
14 financial statements audited in any year during  
15 the period that you were a CFO where you didn't  
16 sign the management representation letter?

17 A. I don't recall. But, John, we're  
18 going back five, six, seven, eight, nine,  
19 decade. I don't -- I don't remember.

20 Q. I don't want to go back that many  
21 decades, but I'm just asking you if you recall  
22 that there was you didn't sign it?

23 A. I -- I -- I don't, but my memory  
24 is -- again, I -- I -- I can't tell you what I  
25 did in 2012. I mean, I think generally, yes,

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2 but I don't -- I don't know for sure, and I  
3 would want to rely on the document.

4 Q. Let me ask the question a little bit  
5 differently then.

6 Do you have any reason to believe  
7 that Highland had its annual financial audit  
8 and you did not sign a management  
9 representation letter in connection with that  
10 audit?

11 MS. DANDENEAU: Objection to form.

12 A. I don't believe it would, but,  
13 again, I would want to -- I don't recall and I  
14 would want to confirm it to -- to make, you  
15 know, an affirmative -- to give an affirmative  
16 answer.

17 Q. Do you know whether PwC required  
18 management to sign management representation  
19 letters?

20 MS. DANDENEAU: Objection to form.

21 A. Yes. I mean, it -- management  
22 representation letters are signed by  
23 management.

24 Q. Okay. And do you know -- do you  
25 have any understanding as to why PwC requires



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2 management to sign management representation  
3 letters?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. I don't know why PwC's -- what PwC's  
7 specific practice is. I know generally what  
8 management representation letters are.

9 Q. Okay. Do you personally -- I'm not  
10 asking about PwC. I'm asking for you -- I'm  
11 asking about you, do you have an understanding  
12 as to why the auditor asks for management  
13 representation letters?

14 A. Okay. So you're asking me in my  
15 personal capacity, yes, I have a general  
16 understanding of why.

17 Q. Can you give me the general  
18 understanding that you have as to why  
19 management representation letters are required?

20 A. They are -- they are required to --  
21 they are -- they are one of the items required  
22 in an audit to help verify completeness.

23 Q. Do you have any -- any other  
24 understanding as to why management  
25 representation letters are required?

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2 A. That is -- that is -- other than  
3 what I said, it is -- it is -- it is required  
4 so -- to ensure that the -- you know, there  
5 is -- there is completeness in what is being  
6 audited.

7 Q. Did you -- did you have a practice  
8 whereby you and Mr. Dondero conferred about the  
9 management representation letters before you  
10 signed them?

11 A. No.

12 Q. Did you have a practice --  
13 withdrawn.

14 Do you see just the next sentence  
15 after the materiality, there is a sentence that  
16 states: We confirm, to the best of our  
17 knowledge and belief, as of June 3rd, 2019, the  
18 date of your report, the following  
19 representations made to you during your audit.

20 Do you see that sentence?

21 A. Yes.

22 Q. Okay. Did you understand when you  
23 signed this letter that you were confirming the  
24 representations that followed?

25 A. When I signed this management

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2 letter -- representation letter, yes.

3 Q. Okay. Did you discuss this letter  
4 with Mr. Dondero before you signed it?

5 A. I don't recall.

6 Q. Do you recall if Mr. Dondero asked  
7 you any questions before he signed the letter?

8 A. I don't recall.

9 Q. Do you recall if you asked  
10 Mr. Dondero any questions before you signed  
11 this letter?

12 A. I don't recall.

13 Q. Is it fair to say that Mr. Dondero  
14 did not disclose to you the existence of the  
15 agreement that we have -- as we've defined that  
16 term prior to the time you signed this letter?

17 MS. DANDENEAU: Objection to form.

18 A. I don't think I understand the  
19 question. So, again, you are saying, did  
20 Mr. Dondero not disclose to me the existence of  
21 this letter?

22 Q. No, I apologize.

23 Did Mr. Dondero disclose to you the  
24 existence of the agreement prior to the time  
25 you signed this letter on June 3rd, 2019?

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2 A. The agreement -- the agreement that  
3 we talked about earlier?

4 Q. Correct.

5 A. Look, as I said earlier, the first  
6 time I heard of this agreement was sometime  
7 this year.

8 Q. Okay. Can we turn -- let's just  
9 look at a couple of items on the list. If we  
10 can go to page 33416. Do you see in Number 35  
11 it talks about the proper recording or  
12 disclosure in the financial statements of ND  
13 relationships and transactions with related  
14 parties.

15 Do you see that?

16 A. I do.

17 Q. As the CFO, do you have any  
18 understanding as to whether Dugaboy is a  
19 related party?

20 A. I don't recall.

21 Q. Do you know whether any of the  
22 affiliates are related parties?

23 A. If -- if it was NexPoint, HCMFA,  
24 HCMS, HCRE, yeah, if -- if that is the  
25 affiliate definition, and there. In ASC 850 --

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2 again, I mean, I haven't looked at ASC 850 in  
3 quite some time, but, you know, if -- if there  
4 is a control language, you know, ASC 850, would  
5 that -- that section in GAAP would -- would  
6 pick up and define what are related parties.

7 So, you know, like I said, if -- one  
8 of the four entities I just described, if -- if  
9 they are in that control definition of ASC 850,  
10 they would be picked up in 35D.

11 Q. Do you -- do you have any reason to  
12 believe that they would be picked up in that  
13 definition, based on your knowledge and  
14 experience?

15 A. I -- I believe that entities  
16 controlled under GAAP are -- are affiliates.

17 Q. Okay. Would Mr. Dondero also  
18 qualify as a related party for purposes of  
19 Section 35D, to the best of your knowledge?

20 A. Yeah, I don't -- I don't know. I  
21 would think -- I would have to read the code  
22 section to see if someone personally -- is it  
23 talking about related parties. So, look, if  
24 your own in control, yeah, I mean, I would have  
25 to read the section.

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2 Q. To the best of your knowledge, was  
3 the existence of the agreement ever disclosed  
4 to PwC?

5 A. I'm not -- I'm not aware.

6 Q. Do you recall if the agreement was  
7 ever disclosed in Highland's audited financial  
8 statements?

9 A. I don't -- I don't remember if it  
10 was in every Highland's audited financial  
11 statements during my tenure. We would have to  
12 read the financial statements to see what was  
13 disclosed, but I'm not -- I mean, as I sit here  
14 today, I'm not aware.

15 Q. That is all I'm asking for.

16 A. I'm not aware.

17 Q. Can we go to the next page, please,  
18 and look at 36. 36 says, we have disclosed to  
19 you the identity of the partnership's related  
20 party relationships and all the related party  
21 relationships and transactions of which we are  
22 aware.

23 Do you see that?

24 A. Yes.

25 Q. To the best of your knowledge, as of

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2 June 3rd, 2019, did Highland disclose to PwC  
3 the identity of the partnership's related  
4 parties and all the related party relationships  
5 and transactions of which it was aware?

6 A. I mean, I can speak for myself as  
7 signer of this representation letter. I  
8 disclosed what -- what, you know, what --  
9 what -- what I knew. Sorry, look, yes, so I --  
10 I disclosed what I knew.

11 Q. Okay. Can we go to page 419. Do  
12 you see at the end there is a reference to  
13 events that occurred since the end of the  
14 fiscal year and the date of the letter?

15 A. Yes.

16 Q. And were you aware of that -- of  
17 that provision of the management representation  
18 letter before you signed the document?

19 A. Yes.

20 Q. Do you have an understanding as to  
21 why PwC asked for that confirmation of that  
22 particular part of the management  
23 representation letter?

24 A. It is -- it is -- it is just -- it  
25 is a typical audit request.

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2 Q. And do you understand -- do you have  
3 an understanding that PwC wanted to know that  
4 as of the date of the audit whether any  
5 material changes had occurred since the end of  
6 the fiscal year, using the definition of  
7 materiality that is in this particular  
8 management representation letter?

9 A. It -- it is -- it is -- it is a --  
10 it is as described. It is just a poorly worded  
11 question, so it is hard for me to say yes.

12 Q. If I asked you this, I apologize,  
13 but did you ever learn when the agreement was  
14 entered into?

15 A. I don't -- I don't -- like I said  
16 before, I don't know or have any details of the  
17 agreement.

18 Q. Okay. Did you ever ask anybody when  
19 the agreement was entered into?

20 A. I did not.

21 Q. Let's look at the audited financial  
22 statements. We will put up on the screen a  
23 document that has been premarked as Exhibit 34.

24 (Exhibit 34 marked.)

25 MS. DANDENEAU: And again, if Ms. La



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2 Canty could please put that in the chat  
3 room, that would be great.

4 MR. MORRIS: I will assure you we  
5 will put every document in the chat room.

6 Q. Now, I'm just going to ask you  
7 questions that are related to the provisions of  
8 this report that concern the affiliate loans,  
9 but again, Mr. Waterhouse, if there is any part  
10 of the document that you need to see or that  
11 you think you might need to see in order to  
12 refresh your recollection to answer any of my  
13 questions, will you let me know that?

14 A. Yes.

15 Q. Because this is a pretty lengthy  
16 document, but do you see that the cover page  
17 here is the Highland consolidated financial  
18 statements for the period ending December 31st,  
19 2018?

20 A. Yes.

21 Q. If we can go to -- I think it is the  
22 next one, looking for PwC's signature line.

23 MS. CANTY: I'm sorry, John, did you  
24 say something?

25 MR. MORRIS: Yes, can we turn the

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2 page. I think it is 215. Yes, stop right  
3 there, just above -- I'm sorry, I want to  
4 see just the date of the report.

5 Q. Okay. Do you see at the bottom of  
6 that page there, Mr. Waterhouse,  
7 PricewaterhouseCoopers has signed this audit  
8 report?

9 A. Yes, I see their signature.

10 Q. Okay. And it is the dated same day  
11 as your management representation letter; is  
12 that right?

13 A. It is -- yes, it is the same day.

14 Q. Was that the practice to sign the  
15 management representation letter on the same  
16 day that the audit report was signed?

17 A. Yes, that is typical in every audit.

18 Q. Can we just scroll down to the  
19 balance sheet on the next page.

20 Do you see that there is a line  
21 there that says, Notes and Other Amounts Due  
22 from Affiliates?

23 A. Yes.

24 Q. Does that line, to the best of your  
25 knowledge, include the amounts that were due

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2 under the affiliate under the notes signed by  
3 the affiliates and Mr. Dondero?

4 MR. RUKAVINA: Objection to the  
5 extent that calls for a legal conclusion.

6 A. I mean, I would want to see the  
7 detail and the build to this \$173,398,000, but,  
8 yes, I mean, if -- if -- given what we  
9 discussed before, you know, it -- it should  
10 capture that.

11 Q. And -- and while you were the CFO of  
12 Highland, were all notes held by Highland that  
13 were issued by an affiliate or Mr. Dondero  
14 carried as assets on Highland's balance sheets?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Object to form.

17 A. I don't -- I don't know how else  
18 they would be carried.

19 Q. Okay. Can you think of any -- are  
20 you aware of any promissory note issued by an  
21 affiliate or Mr. Dondero that was not carried  
22 on Highland's audited financial balance sheets?

23 A. I'm -- I'm -- I'm not aware.

24 Q. Okay. Are you aware of any category  
25 of asset on Highland's balance sheet in which

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2 any of the promissory notes issued by an  
3 affiliate or Mr. Dondero would have been  
4 included?

5 MS. DANDENEAU: Objection to form.

6 A. Sorry, am I aware of any asset of an  
7 affiliate being included --

8 Q. That -- let me -- let me try again.

9 Do you see there is a number of  
10 different assets that are described on this  
11 balance sheet?

12 A. Yes.

13 Q. One of the assets that is described  
14 is Notes and Other Amounts Due from Affiliates;  
15 right?

16 A. Yes.

17 Q. And it is reasonable to conclude  
18 that the notes from the affiliates and  
19 Mr. Dondero are included in that line item;  
20 right?

21 A. Yes, based on this description.  
22 Again, I would want to see a build of this to  
23 100 percent confirm, but based on the  
24 description, the asset description, it is -- it  
25 is likely.

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2 Now, does that mean absolute? I  
3 don't know.

4 Q. Do you have any reason to believe  
5 that the promissory notes would have been  
6 carried on the balance sheet in a category  
7 other than Notes and Other Amounts Due from  
8 Affiliates?

9 A. If they were deemed -- no. If they  
10 were deemed an affiliate, you know, under GAAP,  
11 they should be carried in that line.  
12 Otherwise, it would go into another line.

13 Q. Okay. And do you see the total  
14 asset base as of December 31st, 2018, was  
15 approximately \$1.04 billion?

16 A. Yes.

17 Q. Is my math correct that the Notes  
18 and Other Amounts Due from Affiliates  
19 constituted approximately 17 percent of  
20 Highland's assets as of the end of 2018?

21 A. Well, so how are you defining  
22 Highland?

23 Q. Highland Capital Management, L.P.,  
24 the entity that this audit is subject to -- or  
25 the subject of.

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2 A. On a consolidated or unconsolidated  
3 basis?

4 Q. I'm looking at the balance sheet.  
5 It is a consolidated balance sheet. Okay?

6 Does the Notes and Other Amounts Due  
7 from Affiliates constitute approximately  
8 17 percent of the total assets of Highland  
9 Capital Management, L.P., on a consolidated  
10 basis?

11 MS. DANDENEAU: Objection to form.

12 A. I don't have a calculator in front  
13 of me but I will take your math, if you are  
14 taking the 173 divided by the billion.

15 Q. Okay.

16 A. If that is accurate, yes. But,  
17 again, on a consolidated basis.

18 Q. And on an unconsolidated basis the  
19 percentage would be higher; correct?

20 A. I -- no. I don't know.

21 Q. Well, okay. That is fair.

22 MR. MORRIS: Can we turn to  
23 page 241, please.

24 Q. Do you see that this is a section of  
25 the audit report that is entitled Notes and

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2 Other Amounts Due from Affiliates?

3 A. Sorry, I can't see the -- the --

4 Q. It is at the top.

5 A. Notes and Other Amounts Due from  
6 Affiliates, yes, I see that. I don't -- I  
7 don't have a page number, but I'm on a page  
8 that says at the top: Notes and Other Amounts  
9 Due from Affiliates.

10 Q. Okay. And that is the same title of  
11 the line item on the balance sheet that we just  
12 looked at; right? Notes and Other Amounts Due  
13 from Affiliates?

14 A. Yes.

15 Q. And is it your understanding, based  
16 on your experience and knowledge as the CFO,  
17 that this is the section of the narrative that  
18 ties into the line item that we just looked at?

19 A. Yes.

20 Q. And is this section of the audit  
21 report intended to describe and disclose all of  
22 the material facts concerning the Notes and  
23 Other Amounts Due from Affiliates?

24 MS. DANDENEAU: Objection, form.

25 A. This -- these notes -- these notes

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2 of the financial statements are -- the purpose  
3 is to disclose any material items in relation  
4 to that balance sheet line item.

5 Q. Okay. And all of the information,  
6 to the best of your knowledge, that is set  
7 forth in this section of the audit report was  
8 provided by Highland; correct?

9 A. Yes, it would have been provided by  
10 the corporate accounting team.

11 Q. Okay. And the corporate accounting  
12 team, did that team report to you in the  
13 organizational structure?

14 A. Yes.

15 Q. And did you have any concerns about  
16 the controls that were in place to make sure  
17 that the information provided with respect to  
18 Notes and Other Amounts Due from Affiliates was  
19 accurate and complete?

20 MS. DANDENEAU: Objection to form.

21 A. Not that I recall.

22 Q. Okay. Do you recall ever being  
23 concerned that any portion of the Notes and  
24 Other Amounts Due from Affiliates in any audit  
25 report was inaccurate, incomplete, or not



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2 reliable?

3 A. I didn't -- I had concerns about,  
4 you know, like I talked about before, of there  
5 were -- there were potentially issues in the  
6 control environment. But as far as it relates  
7 to the audited financial statements, any -- the  
8 team would work with the auditors to disclose  
9 all -- all notes in Highland's possession.

10 And any -- any notes that were  
11 deemed material by the auditor, right, these  
12 were disclosed in these -- in this section, you  
13 know, in -- in the notes to the consolidated  
14 financial statements as you presented.

15 Q. Do you recall ever having a  
16 conversation with anybody at any time  
17 concerning the accuracy of the section of audit  
18 reports that relates to Notes and Other Amounts  
19 Due from Affiliates?

20 MS. DANDENEAU: Objection to form.

21 A. You know, as -- as -- I didn't have  
22 direct conversations with  
23 PricewaterhouseCoopers as I had, you know --  
24 I -- I had the team that managed this.

25 Again, I wasn't anywhere chose to

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2 being the point person of this audit. And I  
3 can't recall, you know, when -- you know, I  
4 don't even know if I was ever the point person  
5 during my tenure as CFO.

6 I don't know if PwC had any concerns  
7 when they were performing those audit  
8 procedures. They may have and they may have --  
9 and it may not have been communicated to me. I  
10 don't know.

11 MR. MORRIS: All right. I move to  
12 strike.

13 Q. And I'm going to ask you to listen  
14 carefully to my question.

15 Did you -- do you recall ever having  
16 a conversation with anybody at any time  
17 concerning the accuracy of the reporting  
18 provided in the audited financial statement on  
19 the topic of Notes and Other Amounts Due?

20 MS. DANDENEAU: Objection to form.

21 A. I don't recall for this, but that  
22 doesn't mean that it didn't exist.

23 Q. Okay. But you have no reason to  
24 believe, as you sit here right now, that you  
25 ever discussed with anybody concerns over the

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2 accuracy of the section of the audit reports  
3 called Notes and Other Amounts Due from  
4 Affiliates; correct?

5 MS. DANDENEAU: Object to the form.

6 MS. DEITSCH-PEREZ: Objection to  
7 form.

8 A. I don't recall having any  
9 conversations. But, again, I mean, this is --  
10 this is two years ago.

11 Q. I'm just asking for your  
12 recollection, sir.

13 A. Yes.

14 Q. If you don't recall, this will --

15 A. Yeah.

16 Q. (Overspeak) -- if you don't  
17 recall --

18 A. Yeah, I don't -- I don't recall.

19 Q. Do you know who was responsible for  
20 drafting the audit report?

21 A. Are you asking the actual Highland  
22 employee responsible? I mean, it was  
23 Highland's responsibility, so, I mean, that  
24 is --

25 Q. Right.

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2 A. -- Highland's responsibility.

3 Highland's responsibility.

4 Q. Who, at Highland, was responsible  
5 for drafting this section of the audit report?

6 A. I -- I don't know the answer to  
7 that. Again, there was a team who worked on  
8 this. And I don't know, you know, whether it  
9 was the staff or the manager.

10 Again, this is where I let the teams  
11 manage. And, you know, there may be a  
12 corporate accountant who worked on this. I  
13 just -- you know, I wasn't part of that process  
14 to give that person experience. I don't know.

15 Q. Do you recall having any  
16 communications with anybody at any time  
17 concerning this section of the report?

18 A. Yeah, I don't recall.

19 Q. Do you recall whether you ever told  
20 anybody at any time that any aspect of this  
21 section of the report was inaccurate or  
22 incomplete?

23 A. I don't recall.

24 Q. As you sit here today, do you have  
25 any reason to believe that this section of the

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2 audit report is incomplete or inaccurate in any  
3 way?

4 And I'm happy to give you a moment  
5 to -- to look at it, if you would like.

6 MS. DANDENEAU: Objection to form.

7 MS. DEITSCH-PEREZ: Same.

8 A. I mean, I would have to look at -- I  
9 would have to look at the bill to the note  
10 schedule to make sure I know you presented me  
11 with materiality, but again, there might be a  
12 note as of 12/31/18 that somehow was -- was  
13 under materiality not disclosed. I don't -- I  
14 don't know. I would need more information.

15 Q. Okay. But without more information,  
16 you have no reason to believe anything this  
17 section is inaccurate; correct?

18 MS. DANDENEAU: Objection to form.

19 A. I don't. I mean, you know, this was  
20 part of the audit.

21 Q. Thank you. Now, you will see if we  
22 could scroll just a little bit more that each  
23 of the first five paragraphs concerns  
24 specifically the four affiliates that we've  
25 been discussing and Mr. Dondero.

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2 MR. MORRIS: If we could go the  
3 other way, La Asia. We don't need Okada.  
4 We're going to have to thread the needle.  
5 Okay. Good, perfect.

6 Q. Do you see those five paragraphs  
7 certain the four affiliates and Mr. Dondero as  
8 we've been referring to today?

9 A. Yes.

10 Q. Okay. And do you see at the end of  
11 every paragraph it states, quote: A fair value  
12 of a partnership's outstanding notes receivable  
13 approximates the carrying value of the notes  
14 receivable?

15 A. Yes, I see that.

16 Q. Do you have an understanding of what  
17 that means?

18 A. Yes.

19 Q. What is your understanding of that  
20 sentence?

21 A. It is the -- again, the -- the fair  
22 value, right, which is -- which is what the --  
23 what Highland could sell that asset for. This  
24 statement is comparing the fair value of the  
25 notes to the carrying value, so the carrying

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2 value is the line item that you showed me  
3 earlier that is in Notes and Other Amounts Due  
4 from Affiliates.

5 Q. Okay. Is another way to say this is  
6 that the fair market value of the notes equals  
7 the principal amount and -- withdrawn.

8 Is the fair way to interpret this  
9 that the fair market value of the notes equals  
10 all remaining unpaid principal and interest due  
11 under the notes?

12 MS. DANDENEAU: Object to the form.

13 MS. DEITSCH-PEREZ: Objection, form.

14 A. I don't know the answer to that,  
15 because I don't recall where -- where any --  
16 where -- in what line item was the interest  
17 component reported.

18 Q. All right. Well, if we look in this  
19 audit report, you will see in the middle of the  
20 first paragraph, for example, it states that as  
21 of December 31st, 2018, total interest and  
22 principal due on outstanding promissory notes  
23 was approximately \$5.3 million.

24 Do you see that?

25 A. I do.

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2 Q. Is that the carrying value or the  
3 fair value?

4 A. That would be the carrying value --

5 Q. And is the last --

6 A. -- in my opinion.

7 Q. Okay. And it is in your opinion as  
8 the chief financial officer of Highland during  
9 the period of time that you described; right?  
10 It is an educated opinion?

11 A. I'm reading this at face value. I'm  
12 taking that as that is carrying value.

13 Q. Okay. And does the last sentence  
14 say that the carrying value is roughly  
15 approximate to the fair market value?

16 MS. DANDENEAU: Objection to form.

17 MS. DEITSCH-PEREZ: Objection, form.

18 A. Again, this note to the financial  
19 statement is specific to notes and other  
20 amounts due from affiliates.

21 Q. Correct.

22 A. If the interest component is  
23 reported elsewhere on the balance sheet, you  
24 know, it -- it -- it could be off. Again, I  
25 don't have the detail. I don't know, but yes,



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2 look, I mean, if you -- I mean, if you are  
3 saying the 5.3 million is in the notes and  
4 other amounts due from affiliates, then the  
5 last statement is saying the fair value  
6 approximates 5.3 million. That is what that  
7 last sentence is saying.

8 Q. Do you see in the middle of the  
9 first paragraph -- not in the middle, the next  
10 to last sentence there is a statement that the  
11 partnership will not demand payment on amounts  
12 that exceed HCMFA's excess cash availability  
13 prior to May 31st, 2021.

14 Do you see that?

15 A. I do.

16 Q. Do you know when Highland agreed not  
17 to demand payment as described in that  
18 sentence?

19 A. I don't know specifically.

20 Q. Do you know why Highland agreed not  
21 to demand payment on HCMFA's notes until May  
22 2021?

23 A. Yes.

24 Q. Why was that decision made?

25 A. You know, well, it -- it -- that

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2 decision was made as to not put HCMFA into a  
3 position where it didn't have sufficient assets  
4 to pay for the demand note.

5 Q. And at the time the agreement was  
6 entered into, pursuant to which the partnership  
7 wouldn't demand payment, did HCMFA have  
8 insufficient assets to satisfy the notes if a  
9 demand had been made?

10 MS. DANDENEAU: Objection to form.

11 A. I don't have HCMFA's financial  
12 statements in front of me as of 12/31/18.

13 Q. Was there a concern that HCMFA would  
14 be unable to satisfy its demands under the  
15 notes if demand was made?

16 MS. DANDENEAU: Objection to form.

17 A. Well, there is -- I don't recall --  
18 I mean, there is something, right, in place to  
19 basically not demand payment until May 31, 2021  
20 as detailed here.

21 Q. And who made the decision to enter  
22 into -- who made the decision on behalf of  
23 Highland not to demand payment until May 31st,  
24 2021?

25 A. I'm trying to remember. I don't

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2 remember exactly -- I don't remember if it was  
3 myself or -- or Jim Dondero who -- who -- there  
4 was -- there was something signed, from what I  
5 recall, that -- that -- that backed up this  
6 line item in the -- in the notes I'm -- look,  
7 I'm, I'm --

8 Q. We will get to that.

9 A. You --

10 Q. I'm just --

11 A. You have -- I mean --

12 Q. We're going to give that to you.

13 I'm going to give that to you.

14 A. You -- you -- you have all the  
15 documents. I don't have the documents, and  
16 that is what makes it so hard. I don't have  
17 any documents to prepare for this deposition;  
18 right? You have all -- I don't -- I don't -- I  
19 don't remember, but, you know, again, it would  
20 probably be myself or Jim.

21 Q. Do you know if Highland received  
22 anything in return for its agreement not to  
23 make a demand for two years?

24 A. I don't -- I don't think it referred  
25 anything.

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2 Q. And did you and Mr. Dondero discuss  
3 HCMFA's ability to satisfy the notes if a  
4 demand was made at the time this agreement was  
5 entered into?

6 MS. DANDENEAU: Objection to form.

7 A. I don't -- I don't -- I don't recall  
8 having a specific conversation, if I did, or --  
9 or David Klos.

10 Q. Okay. I'm just asking if you recall  
11 any conversations that you had.

12 A. I don't recall.

13 Q. Okay. Do you know why Highland  
14 loaned the money to HCMFA that is the subject  
15 of the notes described in this paragraph?

16 A. I don't remember specifically why  
17 5.3 million was loaned. I mean, I -- it would  
18 have to be put in the context.

19 Q. Do you have any recollection at all  
20 as to why Highland ever loaned any money to  
21 HCMFA?

22 A. Yes.

23 MS. DANDENEAU: Objection to form.

24 Q. What do you remember about that?

25 A. There was a Highland Global

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2 Allocation Fund, which was a -- a fund managed  
3 by Highland Capital Management Fund Advisors.  
4 There was a -- we -- I'm just telling you,  
5 there was -- there was -- there was a -- a  
6 ultimately a NAV error found in this fund while  
7 it was an open-ended fund and, you know, there  
8 were amounts owed by the advisor in -- in  
9 relation to that NAV error.

10 There were also, for the same fund,  
11 that same fund was ongoing an  
12 open-end-to-close-end conversion, and as part  
13 of that proposal, shareholders who voted for  
14 the conversion received compensation from the  
15 advisor.

16 Q. All right. Now, the events that  
17 you're describing occurred in the spring of  
18 2019; right?

19 A. These started back -- I think, I  
20 mean --

21 Q. I apologize.

22 A. -- that -- I mean, the answer to  
23 that is no.

24 Q. I apologize, the loans that were  
25 made in connection with the events that you're

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2 describing occurred in May 2019; right?

3 MR. RUKAVINA: Objection to the  
4 extent that calls for a legal conclusion.

5 A. I don't recall specifically what  
6 amounts of money were moved when, for what  
7 purpose.

8 Q. Okay. Fair enough. Going to the  
9 next paragraph, do you recall that NexPoint  
10 Advisors had obtained a number of loans from  
11 Highland, and they rolled up those loans into  
12 one note in approximately 2017?

13 A. This is for NexPoint Advisors?

14 Q. Yes.

15 A. I -- I mean, I don't -- I don't  
16 recall the NexPoint Advisors loan being a  
17 roll-up loan, but --

18 Q. Do you know why?

19 A. But, look, if you have documents  
20 that show -- I mean, look, I just don't recall.

21 Q. Okay. That is fair. Do you know  
22 why -- do you have any recollection as to why  
23 Highland loaned money to NexPoint?

24 A. Yes.

25 Q. Why did High -- why do you recall --

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2 what is the reason you recall Highland lending  
3 money to NexPoint?

4 A. I mean, I was just -- I just -- I  
5 just recall. I mean, I just -- I don't  
6 remember why.

7 Q. I understand. And I'm asking you if  
8 you recall --

9 A. Oh, why -- I thought you say --  
10 NexPoint Advisors was launching a fund which  
11 is -- I believe that the legal name is NexPoint  
12 Capital, Inc. And it -- it provided a  
13 co-invest into that fund.

14 And, from what I remember, the --  
15 the -- that NexPoint borrowed money from  
16 Highland at the time to make that co-invest.

17 Q. So this was an investment that  
18 NexPoint was required to make; is that right?

19 MS. DANDENEAU: Objection to form.

20 A. I don't know if it was required to  
21 make, I don't recall that, or if it just made  
22 it.

23 Q. Okay. But your recollection is that  
24 NexPoint made an investment and they borrowed  
25 money from Highland to finance the investment.

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2 Do I have that right?

3 A. Yes.

4 Q. How about HCRE? Do you know why  
5 HCRE borrowed money from Highland?

6 A. I don't remember specifically.

7 Q. Do you remember generally?

8 A. Generally, yeah -- I mean, yes.

9 Q. Can you tell me your general  
10 recollection as to why Highland loaned money to  
11 HCRE?

12 A. For -- for -- for investment  
13 purposes.

14 Q. So HCRE made the investment and it  
15 obtained a loan, or loans, from Highland in  
16 order to finance that investment or those  
17 investments.

18 Do I have that right?

19 A. I mean, I -- you know, generally.

20 Q. Okay. How about Highland Management  
21 Services, Inc.?

22 Do you have any recollection as to  
23 why HCMS borrowed money from Highland?

24 A. Generally.

25 Q. What is your general recollection as



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2 to why HCMS borrowed money from Highland?

3 A. For -- for investment purposes.

4 Q. So it is the same thing, HCMS wanted  
5 to make investments and it borrowed money from  
6 Highland in order to finance those investments;  
7 is that right?

8 A. I mean, yes, generally. I mean, I  
9 can't -- I don't -- on the services, there --  
10 there are several loans in these schedules.  
11 You know, I can't remember why every single one  
12 of these were made, but I would say, yeah, I  
13 mean, generally.

14 Q. Okay. I appreciate that.

15 MR. MORRIS: Let's go to the page  
16 with Bates No. 251. La Asia, are you  
17 there?

18 MS. CANTY: Sorry, John. It went  
19 out for a minute. Can you say that again.  
20 I don't know what is going on.

21 MR. MORRIS: The page with Bates  
22 No. 251, can we go to that.

23 MS. CANTY: Yes, sorry.

24 MR. MORRIS: Keep going to the  
25 bottom. Yeah, there you go.

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2 Q. Do you see, Mr. Waterhouse, that  
3 there is a section there called Subsequent  
4 Events?

5 A. I do.

6 Q. And does this relate to the last  
7 sentence above the signature line on the  
8 management representation letter that we talked  
9 about earlier where you made the representation  
10 that you disclosed subsequent events?

11 A. I mean, it relates to it, but not in  
12 its entirety.

13 Q. Okay.

14 MR. MORRIS: If we can scroll up to  
15 capture the entirety of this section right  
16 here.

17 Q. And what do you mean by that, sir?

18 MR. MORRIS: Yeah, right there.

19 Perfect.

20 A. There are -- there are different  
21 subsequent events in -- under GAAP. So there  
22 are -- and -- and -- so what we see in the  
23 notes to the financial statements are one type  
24 of subevent.

25 Q. Okay. And -- and would the type of

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2 subsequent event relating to affiliate loans be  
3 captured in this section if they were -- if  
4 they were made after the end of the fiscal year  
5 and prior to the issuance of the audit report?

6 A. Yes, if they were deemed material or  
7 disclosable.

8 Q. Okay. I appreciate that.

9 Do you see the next to the last  
10 entry there? It says, Over the course of 2019  
11 through the report date, HCMFA issued  
12 promissory notes to the partnership in the  
13 aggregate amount of \$7.4 million?

14 A. Yes.

15 Q. And does that refresh your  
16 recollection that those are the notes that  
17 related to the NAV error that you mentioned  
18 earlier?

19 A. I don't -- I don't remember the  
20 exact. Again, there are -- I mentioned two  
21 line items; right?

22 Q. Yes.

23 A. I mean, it was the GAAP conversion  
24 process plus the -- the NAV error. I don't  
25 have the details. I don't recall specifically

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2 if -- you know, what -- if that 7.4 million was  
3 solely attributable to the NAV error.

4 Q. Okay. But there is no question that  
5 Highland told PricewaterhouseCoopers that over  
6 the course of 2019 HCMFA issued promissory  
7 notes to the partnership in the aggregate  
8 amount of \$7.4 million; correct?

9 A. In the course of the audit, we would  
10 have produced all promissory notes in our  
11 possession, including the ones that are  
12 detailed here.

13 Q. Do you recall that you signed the  
14 two promissory notes that are referenced in  
15 that provision?

16 MS. DANDENEAU: Objection to form.

17 A. I didn't recall initially but I've  
18 been reminded.

19 Q. Okay. And -- and do you recall that  
20 those notes are dated May 2nd and May 3rd,  
21 2019?

22 A. Yes.

23 Q. So that was just a month before the  
24 audit was completed; correct?

25 A. Yes. I think we had a June 3rd

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2 date, right, if -- if my memory serves me  
3 right.

4 Q. Yes, I will represent to you that  
5 your memory is accurate in that regard.

6 Did anybody ever instruct you as the  
7 CFO to correct this statement that we're  
8 looking at in subsequent events?

9 A. So let me understand. You're saying  
10 when I was CFO at Highland Capital did anyone  
11 ever ask me to correct the -- over the course  
12 of 2019 through the report date HCMFA issued  
13 promissory notes, this statement?

14 Q. Right.

15 A. Not that I'm aware.

16 Q. While you were the CFO of Highland,  
17 did anybody ever tell you that that sentence  
18 was wrong?

19 A. Not that I'm aware.

20 Q. Highland -- withdrawn.

21 HCMFA disclosed these notes in its  
22 own audited financial statements; right?

23 MR. RUKAVINA: Objection, form.

24 A. I assume that these would be  
25 material -- if these are material financial

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2 statements, yes, they -- they -- they should be  
3 and they were likely disclosed.

4 Q. Now, there is no statement  
5 concerning the 2019 notes about the forbearance  
6 that we looked at in the affiliated note  
7 section of the report; right?

8 MS. DANDENEAU: Objection to form.

9 Q. I'll withdraw. That was bad.

10 Do you recall when we were looking  
11 at the paragraph concerning HCMFA earlier it  
12 had that disclosure about the agreement whereby  
13 Highland wouldn't ask for demand on the -- on  
14 the HCMFA notes?

15 A. Yes.

16 Q. That forbearance disclosure is not  
17 made with respect to the 2019 notes; right?

18 A. Not -- look, not that I can recall,  
19 unless -- unless it was done at a subsequent  
20 day.

21 Q. Right. And it is not in the  
22 subsequent event section that we're looking at  
23 right now where the 2019 notes are described;  
24 right?

25 A. Right. But this is through

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2 June 3rd. It could have been done on June 4th.

3 I don't -- I don't -- I don't recall.

4 Q. Okay.

5 MR. MORRIS: Can we put up on the  
6 screen the HCMFA audit report. And while  
7 we're --

8 MS. DANDENEAU: What exhibit is  
9 this?

10 MR. MORRIS: La Asia, what number is  
11 that?

12 MS. CANTY: 45.

13 MR. MORRIS: So this will be marked  
14 as Exhibit 45.

15 (Exhibit 45 marked.)

16 MS. CANTY: Yeah, and I will put it  
17 in the chat.

18 MS. DANDENEAU: Thank you.

19 Q. Okay. All right. Do you see that  
20 this is the consolidated financial statements  
21 for HCMFA for the period ending 12/31/18?

22 A. Yes.

23 Q. As the treasurer of HCMFA at the  
24 time, did you have to sign a management  
25 representation letter similar to the one that

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2 we looked at earlier for Highland?

3 A. I would imagine I would have been  
4 asked to. I don't recall if I did.

5 Q. Do you recall ever being asked by an  
6 auditor to sign a management representation  
7 letter and then not doing it?

8 A. No.

9 MR. MORRIS: Can we just scroll down  
10 again. I just want to see the date of the  
11 document.

12 A. I mean, let me -- you know, there  
13 are different versions to management  
14 representation letters I will qualify.

15 Yes, there are certain -- from time  
16 to time auditors can make representations  
17 that -- in the rep letter that is being  
18 proposed that are inaccurate or out of scope or  
19 things like that and they've asked for  
20 signature.

21 In that context, yes. I mean, you  
22 know -- I mean, if I have been asked to sign  
23 and make those representations and those  
24 representations are invalid, yes, I would not,  
25 I mean, I -- I wouldn't sign that.



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2 Q. Okay. PricewaterhouseCoopers served  
3 as HCMFA's outside auditors as well; correct?

4 A. Yes.

5 Q. Do you see that this audit report is  
6 signed on June 3rd, 2019, just like the  
7 Highland audit report?

8 A. That is correct.

9 Q. And did the process of -- of  
10 preparing HCMFA's audit report, was that the  
11 same process that Highland followed when it did  
12 its audit report at this time?

13 A. I mean, it is a different entity.  
14 There are different assets. You know, it --  
15 it -- it is -- as you saw, Highland's  
16 financials are on a consolidated basis. This  
17 is different, so it is under the same control  
18 environment and team.

19 Q. Okay. I appreciate that. So the  
20 same control environment and team participated  
21 in the preparation of the audit for Highland  
22 and for HCMFA at around the same time; correct?

23 A. Yes.

24 MR. MORRIS: Can we go to page 17 of  
25 the report. I don't have the Bates number.

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2 Q. Okay. Do you see that just like  
3 Highland's audited financial report, HCMFA's  
4 audited financial report also has a section  
5 related to subsequent events?

6 A. Yes.

7 Q. And am I reading this correctly that  
8 just as Highland had done, HCMFA disclosed in  
9 its audited financial report a subsequent event  
10 that related to the issuance of promissory  
11 notes to Highland in the aggregate amount of  
12 \$7.4 million in 2019?

13 A. That is what I see in the report.

14 Q. And you were the treasurer of HCMFA  
15 at the time; right?

16 A. Yes, to the best of my knowledge.

17 Q. And did anybody ever tell you prior  
18 to the time of the issuance of this audit  
19 report that that sentence relating to HCMFA's  
20 2019 notes was inaccurate or wrong in any way?

21 A. Not that I recall.

22 Q. As you sit here right now, has  
23 anybody ever told you that that sentence is  
24 inaccurate or wrong in any way?

25 A. Not that I recall.

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2 Q. I apologize if I asked you this  
3 already, but has anybody ever told you at any  
4 time that you are not authorized to sign the  
5 promissory notes that are the subject of the  
6 sentence we're looking at?

7 A. Not that I recall.

8 Q. Did anybody ever tell you at any  
9 time that you had made a mistake when you  
10 signed the promissory notes that are the  
11 subject of this sentence?

12 A. Say that again. Did anyone ever say  
13 that I made a mistake?

14 Q. Let me ask the question again.  
15 Did anybody ever tell you at any  
16 time that you made a mistake when you signed  
17 the two promissory notes in Highland's favor on  
18 behalf of HCMFA in 2019?

19 A. Not that I recall.

20 MR. MORRIS: Let's just look at the  
21 promissory notes quickly. Can we please  
22 put up Document Number 1, and so this is in  
23 the pile that y'all have. We'll just go  
24 for a few more minutes and we can take our  
25 lunch break.

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2 Q. All right. So I don't know if you  
3 have seen this before, sir. Do you see that  
4 this is a complaint against HCMFA?

5 A. Yes, I am looking at it on the  
6 screen.

7 Q. Okay. And have you ever seen this  
8 document before?

9 A. I went through some of these  
10 documents with my counsel here yesterday.

11 MR. MORRIS: All right. Can we go  
12 to Exhibit 1 of this document.

13 Q. Do you see Exhibit 1 is a  
14 \$2.4 million promissory note back in 2019?

15 A. Yeah, I found it in the book. Yes,  
16 I have it here in front of me.

17 Q. And this is a demand note, right, if  
18 you look at Paragraph 2?

19 A. Yes.

20 Q. And this is a note where the maker  
21 is HCMFA, and Highland is the payee; right?

22 A. Yes.

23 MR. MORRIS: And if we can scroll  
24 down, can we just see Mr. Waterhouse's  
25 signature.

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2 Q. Is that your signature, sir?

3 A. Yes, it is.

4 Q. And did you sign this document on or  
5 around May 2nd, 2019?

6 A. I don't recall specifically signing  
7 this, but this is my signature.

8 Q. Okay. And do you recall that  
9 Highland transferred \$2.4 million to HCMFA at  
10 or around the time you signed this document?

11 A. I don't recall specifically. I  
12 would want to, as I sit here today, go back and  
13 confirm that, but again, presumably that --  
14 that -- that did happen.

15 Q. You wouldn't have signed this  
16 document if you didn't believe that HCMFA  
17 either received or was going to receive  
18 \$2.4 million from Highland; is that fair?

19 A. I mean, it -- if -- if -- if there  
20 wasn't a transfer of value, yeah, I mean, you  
21 know, I would have no reason to -- to sign a  
22 note.

23 Q. And -- and Highland wouldn't have  
24 given this note to PricewaterhouseCoopers if --  
25 withdrawn.

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2 HCMFA wouldn't have given this note  
3 to PricewaterhouseCoopers if it hadn't received  
4 the principal value of -- of the note in the  
5 form of a loan; correct?

6 MR. RUKAVINA: Objection, legal  
7 conclusion, speculation and form.

8 A. Again, we -- what we provided to PwC  
9 were, as part of the audit, any promissory  
10 notes executed and outstanding. You know, as a  
11 part of the audit, they, you know, they -- they  
12 have copies of all the bank statements,  
13 things -- things of that sort.

14 MR. MORRIS: Okay. Can we go to  
15 Exhibit 2.

16 (Exhibit 2 marked.)

17 Q. Do you see that this is a promissory  
18 note dated May 3rd, 2019 in the amount of  
19 \$5 million?

20 A. Yes.

21 Q. Do you believe this is also a demand  
22 note if you look at Paragraph 2?

23 A. Yes.

24 Q. And do you see that HCMFA is the  
25 maker, and Highland is the payee?

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2 A. Yes.

3 Q. And if we go to the bottom, can we  
4 just confirm that that is your signature?

5 A. Yes.

6 Q. And together these notes are the  
7 notes that are referred to both in Highland and  
8 HCMFA's audited financial reports in the  
9 subsequent event sections; correct?

10 MS. DANDENEAU: Objection to form.

11 A. They -- they -- they totaled  
12 \$7.4 million, so presumably, yes.

13 Q. Okay. And you were authorized to  
14 sign these two notes; correct?

15 MR. RUKAVINA: Objection, legal  
16 conclusion.

17 A. Yeah. I mean, I'm -- I was the  
18 officer of -- of HCMFA. You know, I -- I'm not  
19 the legal expert on -- on what that -- what  
20 that confers to me or what it doesn't. I mean,  
21 that is my signature on the notes.

22 Q. And you believed you were authorized  
23 to sign the notes; is that fair?

24 A. I signed a lot of documents in my  
25 capacity, just because it is operational in

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2 nature. So, you know, to me this was just  
3 another document, to be perfectly honest.

4 Q. Sir, would you have signed  
5 promissory notes with the principal amount of  
6 \$7.4 million if you didn't believe you were  
7 authorized to do so?

8 MS. DANDENEAU: Objection to form.

9 Q. Are you frozen?

10 A. No. I'm just -- you know, it is --  
11 you know, again, I typically don't sign  
12 promissory notes, and I don't recall why I  
13 signed these, but -- you know, but I did.

14 Q. All right. So listen carefully to  
15 my question. Would you have ever signed  
16 promissory notes with a face amount of  
17 \$7.4 million without believing that you were  
18 authorized to do so?

19 A. No. I mean, I'm -- I'm putting my  
20 signature on there, so no.

21 Q. Okay. And would you have signed two  
22 promissory notes obligating HCMFA to pay  
23 Highland \$7.4 million without Mr. Dondero's  
24 prior knowledge and approval?

25 MS. DEITSCH-PEREZ: Object to the



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2 form.

3 A. You know, from -- from what I recall  
4 around these notes, you know, I don't recall  
5 specifically Mr. -- Mr. Dondero saying to -- to  
6 make this a loan.

7 So my conversation with Mr. Dondero  
8 around the culmination of the NAV error as  
9 related to TerreStar which was a -- a -- I  
10 think it was a year and a half process. I  
11 don't know, it was a multi-month process, very  
12 laborious, very difficult.

13 When we got to the end, I had a  
14 conversation with Mr. Dondero on where to, you  
15 know, basically get the funds to reimburse the  
16 fund, and I recall him saying, get the money  
17 from Highland.

18 Q. And so he told you to get the money  
19 from Highland; is that right?

20 A. That is what I recall -- in my  
21 conversation with him, that is -- that is what  
22 I can recall.

23 Q. Do you know who drafted these notes?

24 A. I don't.

25 Q. Did you ask somebody to draft the

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2 notes?

3 A. I didn't ask -- I don't specifically  
4 ask people to draft notes really. I mean,  
5 again, you know, the legal group at Highland is  
6 responsible and has always been responsible for  
7 drafting promissory notes.

8 Q. So based on your -- based on the  
9 practice, you believe that somebody from the  
10 Highland's legal department would have drafted  
11 these notes. Do I have that right?

12 MS. DEITSCH-PEREZ: Object to the  
13 form. John, I also asked you for the Word  
14 versions of these notes so we could look at  
15 the properties, and you have not provided  
16 them. Are you intending to?

17 MR. MORRIS: No.

18 Q. Can you answer my question, sir?

19 A. Again, I --

20 MS. DANDENEAU: Do you want him to  
21 repeat it?

22 A. Yeah, why don't you repeat it?

23 Q. Sure. Mr. Waterhouse, based on the  
24 practice that you have described in your  
25 understanding, do you believe that these notes

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2 would have been drafted by somebody in the  
3 legal department?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. Yes.

7 Q. Okay. And do you know who would  
8 have instructed -- do you have any knowledge as  
9 to who would have instructed the legal  
10 department to draft these notes?

11 MS. DEITSCH-PEREZ: Object to the  
12 form.

13 A. It was whoever was working -- I  
14 mean, it was likely someone on the team. I  
15 mean, I don't remember exactly on every note or  
16 every document, but, again, a lot of these  
17 things of this nature -- they're operational in  
18 nature -- were handled by the team.

19 The team knows to -- I mean, we  
20 don't draft documents. We're not lawyers.  
21 We're not attorneys. It is not what I do or  
22 accountants do.

23 So they are always instructed to go  
24 and -- and go to the legal team to get  
25 documents like this drafted. Also, when you go

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2 to the legal team, the -- you know, we always  
3 loop in compliance. And compliance -- when you  
4 go to the legal team, compliance is part of  
5 legal team. They're made aware of -- of -- of  
6 these types of transactions.

7 Q. And do you believe that you had  
8 the -- withdrawn.

9 Did you ever tell Mr. Dondero --  
10 (inaudible) -- did you see those?

11 A. Sorry.

12 MS. DEITSCH-PEREZ: I did not hear  
13 the end of that question.

14 Q. Did you ever tell Mr. Dondero that  
15 you signed these two notes?

16 A. I don't recall ever -- no, I don't  
17 recall having a conversation with him.

18 Q. Did you ever discuss these two notes  
19 with him at any time?

20 A. The conversation, I recall, was what  
21 I described earlier. And that is the only time  
22 I recall ever discussing this.

23 Q. Okay. But the corporate accounting  
24 group had a copy of this -- of these two notes.  
25 And pursuant to the audit process, the

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2 corporate accounting group gave the two notes  
3 to PricewaterhouseCoopers in connection with  
4 the audit; correct?

5 MS. DANDENEAU: Objection to form.

6 A. Yes. I mean, that is -- yeah, I  
7 mean, they -- unless the legal team can also  
8 retain copies of items like this. I mean, I  
9 don't know everything that they would retain as  
10 well.

11 The legal team would also, if they  
12 had documents as part of audits, turn that over  
13 to the auditors as well. So it could have been  
14 the corporate accounting team. It could be  
15 someone on the legal team.

16 Q. All right. So you didn't -- you  
17 didn't draft this note; right?

18 A. I -- I -- I did not.

19 Q. But somebody at Highland did; is  
20 that fair?

21 MS. DEITSCH-PEREZ: Object to the  
22 form.

23 A. I don't know. I mean, we can go to  
24 the legal team. I don't -- I'm not sitting  
25 behind someone in legal. Maybe they went to

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2 outside counsel. I have no idea.

3 Q. Did you have any reason to believe  
4 you weren't authorized to sign this note,  
5 either of these two notes?

6 A. I think I have already answered that  
7 question.

8 Q. Okay. You didn't give these notes  
9 to PricewaterhouseCoopers; correct?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall giving these to  
12 PricewaterhouseCoopers.

13 Q. And in the practice that you have  
14 described, somebody in the corporate accounting  
15 group would have given these two notes to  
16 PricewaterhouseCoopers; correct?

17 MS. DANDENEAU: Objection to form.

18 A. I think I've answered that. I said  
19 either the corporate accounting team or maybe  
20 the legal team.

21 MR. MORRIS: Okay. Why don't we  
22 take our lunch break here.

23 VIDEOGRAPHER: We're going off the  
24 record at 1:04 p.m.

25 (Recess taken 1:04 p.m. to 1:49 p.m.)

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2 VIDEOGRAPHER: We are back on the  
3 record at 1:49 p.m.

4 Q. Mr. Waterhouse, did you speak with  
5 anybody during the break about the substance of  
6 this deposition?

7 A. I spoke to -- to Deb and Michelle.

8 Q. About the substance of the  
9 deposition?

10 A. Yes.

11 Q. Can you tell me what you talked  
12 about?

13 MS. DANDENEAU: No. We object on  
14 the basis of privilege.

15 Q. Okay. You are going to follow your  
16 counsel's objection here?

17 A. Yes.

18 Q. Okay.

19 MR. MORRIS: Can we put up on the  
20 screen Exhibit 35.

21 (Exhibit 35 marked.)

22 Q. Are you able to see that document,  
23 sir?

24 A. Yes.

25 Q. Have you ever seen an incumbency

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2 certificate before?

3 A. I have.

4 Q. Do you have a general understanding  
5 of what an incumbency certificate is?

6 A. I have a general understanding.

7 Q. What is your general understanding?

8 A. You know, those -- my general  
9 understanding is that the incumbency  
10 certificate basically lists folks that can --  
11 are like authorized signers.

12 Q. Okay. And do you see that this is  
13 an incumbency certificate for Highland Capital  
14 Management Fund Advisors, L.P.?

15 A. Yes.

16 Q. Okay. And if we could scroll down  
17 just a little bit, do you see that it's dated  
18 effective as of April 11th, 2019?

19 A. Yes, I see that.

20 Q. Okay. And is that your signature in  
21 the middle of the signature block?

22 A. Yes, it is.

23 Q. And by signing it, did you accept  
24 appointment as the treasurer of HCMFA effective  
25 as of April 11th, 2019?



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2 A. Again, I'm not the legal -- I don't  
3 know if this makes me the treasurer or the  
4 appointment. I don't know -- I don't know  
5 that, so I don't -- I don't know if that  
6 document -- again, I think -- again, I'm not  
7 the legal expert. I think isn't there --  
8 aren't there other legal documents that detail  
9 who the officers are that could be incorporated  
10 or things like that? Again, I don't want to  
11 play armchair attorney here.

12 Q. I'm not asking you for a legal  
13 conclusion. I'm asking you for your knowledge  
14 and understanding. When you signed this  
15 document, did you understand that you were  
16 accepting an appointment as the treasurer of  
17 HCMFA?

18 MS. DANDENEAU: Objection to form.

19 MS. DEITSCH-PEREZ: Objection, form.

20 A. Again, I don't think this -- that  
21 wasn't my understanding. I don't think this  
22 makes -- this document makes me the treasurer.

23 Q. What do you think this document --  
24 why did you sign this document?

25 MS. DEITSCH-PEREZ: Objection to

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2 form.

3 MR. MORRIS: You're objecting to the  
4 form of the question when I asked him why  
5 did you sign the document? What is the  
6 basis for the objection?

7 MS. DEITSCH-PEREZ: Because, John, I  
8 think that it does call for a legal  
9 conclusion other than -- with him saying  
10 because somebody told me to sign this  
11 document. But if you want to go there,  
12 that is fine.

13 MR. MORRIS: Okay.

14 MS. DANDENEAU: I don't think --  
15 he's already said he's not a lawyer.

16 MR. MORRIS: I'll allow the witness  
17 to answer this question.

18 Q. Why did you sign this document, sir?

19 A. I mean, our -- our legal group would  
20 bring by these incumbency certificates from  
21 time to time. I have no idea why they're being  
22 updated, and I was asked to sign.

23 Q. Did you ask anybody, what is this  
24 document?

25 A. No.

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2 Q. Did anybody tell you why they needed  
3 you to sign the document?

4 A. Not that I can recall.

5 Q. You testified earlier that you  
6 understood that you served as the acting  
7 treasurer for HCMFA; correct?

8 A. Yes.

9 Q. How did you become the acting  
10 treasurer of HCMFA?

11 MS. DANDENEAU: Objection to form.

12 A. I don't -- I don't know the legal --  
13 I don't know the legal mechanic of how I became  
14 the acting treasurer.

15 Q. I'm not asking for the legal  
16 mechanic. I'm asking you as the person who  
17 is --

18 MS. DANDENEAU: John, you said --

19 MR. MORRIS: Stop.

20 MS. DANDENEAU: -- how did you  
21 become the treasurer. That is --

22 MR. MORRIS: Please stop.

23 MS. DANDENEAU: That is a legal  
24 question.

25 MR. MORRIS: I am not asking any

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2 legal questions, to be clear. I'm asking  
3 for this witness' understanding as to how  
4 he became the acting treasurer of HCMFA.  
5 If he doesn't know, he can say he doesn't  
6 know, but this legal stuff is nonsense, and  
7 I really object to it.

8 Q. Sir, I'm asking you a very simple  
9 question.

10 MS. DANDENEAU: Argumentative.

11 Q. You testified -- you testified that  
12 you became the acting treasurer of HCM --  
13 HCMFA; correct?

14 A. Yes.

15 Q. How did that happen?

16 MS. DANDENEAU: Again, object to  
17 form.

18 MR. MORRIS: I can't wait to do this  
19 in a courtroom. Good God.

20 Q. Go ahead, sir.

21 A. I don't know the exact process of  
22 how that happened.

23 Q. Do you have any idea whether signing  
24 this document was part of the process?

25 MR. MORRIS: You know what --

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2 MS. DANDENEAU: Objection.

3 MR. MORRIS: -- withdrawn. You guys  
4 want to do this, I can't wait. I can't  
5 wait. This is the craziest stuff ever.

6 MS. DANDENEAU: John, he said he's  
7 not a lawyer, and you are asking him for a  
8 legal conclusion, and he says he doesn't  
9 know, and you persist.

10 MR. MORRIS: Okay.

11 MS. DANDENEAU: So you can ask these  
12 questions --

13 MR. MORRIS: Did anyone -- please  
14 stop talking.

15 MS. DANDENEAU: -- at another  
16 point -- no, no, no, I'm entitled to talk,  
17 too; right? If you're going to make these  
18 accusations as if we're trying to stonewall  
19 you, this is not the witness to ask that  
20 question.

21 MR. MORRIS: I can't -- I can't  
22 wait -- I can't wait to do this in a  
23 courtroom. I will just leave it at that.

24 MS. DANDENEAU: That's right, I'm  
25 sure you can't.

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2 Q. Did anyone ever tell you, sir, that  
3 even though you were the acting treasurer of  
4 HCMFA, that you were not authorized to sign the  
5 two promissory notes that we looked at before  
6 lunch?

7 A. I'm not sure I understand the  
8 question. I wasn't -- I mean, I'm -- I'm the  
9 current acting treasurer.

10 Q. Did anybody ever tell you at any  
11 time that even though you were the acting  
12 treasurer of HCMFA, that you were not  
13 authorized to sign the two promissory notes  
14 that we looked at before lunch?

15 MS. DANDENEAU: Objection to form.

16 A. Not that I recall.

17 Q. Did anybody ever tell you at any  
18 time that you were not authorized to sign the  
19 two promissory notes that we looked at before  
20 lunch?

21 A. Not that I recall.

22 Q. Did anybody ever tell you at any  
23 time that you should not have signed the two  
24 promissory notes that we looked at before  
25 lunch?

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2 A. Not that I recall.

3 Q. Did you ever tell anybody at any  
4 time that you weren't authorized to sign the  
5 two promissory notes that we looked at before  
6 lunch?

7 A. Not that I recall.

8 Q. Did you ever tell anybody at any  
9 time that you made a mistake when you signed  
10 the two promissory notes that we looked at  
11 before lunch?

12 A. Not that I recall.

13 Q. As you sit here right now, do you  
14 have any reason to believe that you were not  
15 authorized to sign the two documents that we  
16 looked at before lunch?

17 MS. DANDENEAU: Objection to form.

18 A. If -- if this is the -- the valid  
19 incumbency certificate, I mean, this does --  
20 this does detail who the signers are.

21 Q. Okay. And looking at that document,  
22 does that give you comfort that you were  
23 authorized to sign the two promissory notes  
24 that we looked at before lunch?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 MS. DANDENEAU: Objection, form.

4 A. Yes.

5 Q. As of October 20th -- withdrawn.

6 I'm trying to take your mind back to  
7 a year ago, October 2020. Do you recall at  
8 that time that the boards of the retail funds  
9 were making inquiries about obligations that  
10 were owed by the advisors to Highland in  
11 connection with their 15(c) review?

12 MS. DANDENEAU: Objection to form.

13 A. I don't -- I don't recall.

14 Q. As of October 2020, you had no  
15 reason to believe you weren't authorized to  
16 sign the two promissory notes that we just  
17 looked at; correct?

18 MS. DANDENEAU: Objection, form.

19 MS. DEITSCH-PEREZ: Objection to  
20 form.

21 A. I didn't think about it in October  
22 of 2020, but I mean --

23 Q. Did you have any reason to believe  
24 at that time that you weren't authorized to  
25 sign the two notes that we just looked at?



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2 A. Not that I'm aware, no.

3 Q. Did you have any reason to believe a  
4 year ago that you made a mistake when you  
5 signed those two notes?

6 A. Not that I'm aware.

7 Q. A year ago you believed that HCMFA  
8 owed Highland the unpaid principal amounts that  
9 were due under those two notes; correct?

10 A. They're -- they're promissory notes  
11 that were -- as you presented, that were --  
12 that were executed. Whether they're valid or  
13 if there's other reasons, I didn't -- I don't  
14 know.

15 Q. I'm not asking you whether they're  
16 valid or not. I'm asking you for your state of  
17 mind. A year ago you believed that HCMFA  
18 was -- was obligated to pay the unpaid  
19 principal amount under the two notes that you  
20 signed; correct?

21 A. Yeah, I'm -- I'm -- yes.

22 Q. Thank you. Are you aware -- you're  
23 aware that -- that in 2017, NexPoint issued a  
24 note in favor of Highland in the approximate  
25 amount of \$30 million; correct?

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2 A. I'm -- I'm -- I'm generally aware.

3 Q. Okay. And are you generally aware  
4 that from time to time, after the note was  
5 issued by NexPoint, that moneys were applied to  
6 principal and interest that were due under the  
7 NexPoint note?

8 A. Yes, I'm generally aware.

9 Q. Okay. And did anybody ever tell you  
10 that the payments that were made against the  
11 NexPoint notes were made by mistake?

12 A. Yes.

13 Q. And is it the one payment that we  
14 talked about earlier today?

15 A. We talked about a lot of things  
16 today. What payment are we talking about?

17 Q. Okay. Who told you that any payment  
18 made against the NexPoint note was made by  
19 mistake?

20 A. D.C. Sauter.

21 Q. When did Mr. Sauter tell you that?

22 A. I don't -- I don't remember  
23 specifically.

24 Q. Do you remember what payments --

25 A. Sometime -- sometime this year.

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2 Q. Sometime in 2021?

3 A. Yes.

4 Q. Do you remember what payment he was  
5 referring to?

6 A. It was the -- the payment made in  
7 January of 2021 or -- yeah, January of -- of  
8 this -- January of 2021.

9 Q. Okay. So did anybody ever tell you  
10 at any time that any payment that was made  
11 against principal --

12 A. And -- and -- and -- hold on, and it  
13 may have been other -- again, it may have been  
14 that payment or -- or there may have been what  
15 he was explaining, a misapplication of prior  
16 payments as well.

17 Q. Can you -- can you give me any  
18 specificity -- withdrawn.

19 Withdrawn. Can you tell me  
20 everything that Mr. Sauter told you about --  
21 about errors in relation to payments made  
22 against principal and interest due under the  
23 NexPoint note?

24 MS. DANDENEAU: Can I just --

25 MR. RUKAVINA: Hold on. Hold on.

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2 I'm going to object here, and I'm going to  
3 instruct the witness not to answer  
4 depending on the discussion that you had --  
5 Mr. Waterhouse, I'm the lawyer for  
6 NexPoint, and as everyone here knows, D.C.  
7 Sauter is in-house counsel.

8 So if you and Mr. Sauter were having  
9 a factual discussion and him preparing his  
10 affidavit, et cetera, then go ahead and  
11 answer that. But if you were having a  
12 discussion as to our legal strategy in this  
13 lawsuit, or anything having to do with  
14 that, then do not answer that.

15 And if you need to talk to either  
16 your counsel or me about that, then we need  
17 to have that discussion now.

18 A. Okay. Yeah, I don't -- I don't  
19 really know how to make that distinction, so  
20 maybe I need to talk to counsel before I  
21 answer, or if I can answer.

22 Q. Let me just ask you this question:  
23 Did -- did you have any conversation with  
24 Mr. Sauter about any payment of principal and  
25 interest prior to the time that you left

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2 Highland's employment, or did it happen after  
3 you left Highland's employment?

4 A. I don't -- I don't recall if -- I  
5 don't recall. I mean, it was sometime in 2021.  
6 I don't remember if it was before or after I  
7 was let go from Highland.

8 Q. Okay. So -- so nobody told you  
9 prior to 2021 that any error or mistake was  
10 made in the application of payments against  
11 principal and interest due on the NexPoint  
12 note. Do I have that right?

13 A. Yeah, I don't -- I don't recall this  
14 being in 2020.

15 Q. Okay. And it didn't happen in 2019;  
16 correct?

17 A. I don't recall that happened.

18 Q. And it didn't happen in 2018;  
19 correct?

20 A. I don't -- I don't recall that  
21 happening.

22 Q. And it didn't happen in 2017;  
23 correct?

24 A. I don't recall.

25 Q. But -- but you believe the

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2 conversation took place in 2021. You just  
3 don't remember if it was before or after you  
4 left Highland's employment. Do I have that  
5 right?

6 A. It was sometime this year. I  
7 don't -- I don't remember.

8 Q. Okay. Did you report this  
9 conversation to Mr. Seery at any point?

10 A. I don't believe so.

11 Q. Did you report this conversation to  
12 anybody at DSI at any time?

13 A. I don't recall.

14 Q. Do you have -- you don't have a  
15 recollection of ever doing that; correct?

16 A. Yeah, that's right. I don't recall  
17 doing that.

18 Q. Do you recall telling anybody at  
19 Pachulski Stang about the conversation you  
20 recall with Mr. Sauter?

21 A. No, I don't -- I don't recall.

22 Q. Did you tell any of the independent  
23 board members about your conversation with  
24 Mr. Sauter?

25 A. I don't recall.

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2 Q. Did you tell any of the employees at  
3 Highland before you left Highland's employment  
4 about this call that you had with Mr. Sauter?

5 MS. DANDENEAU: Objection to form.

6 A. No, I don't -- no, I don't recall.

7 Q. NexPoint -- to the best of your  
8 knowledge, did NexPoint ever file a proof of  
9 claim against Highland to try to recover moneys  
10 that were mistakenly paid against the principal  
11 and interest due under the note?

12 A. Okay. Hold on. You are saying did  
13 NexPoint Advisors file a proof of claim to  
14 Highland for errors related to payments under  
15 the NexPoint note to Highland?

16 Q. Correct.

17 A. I'm -- I'm -- I'm not -- I'm not  
18 aware.

19 Q. Are you aware --

20 A. I'm not the legal person here, I  
21 don't know.

22 Q. I'm just asking for your knowledge,  
23 sir.

24 A. Yeah, I don't know. I'm not aware.

25 Q. Are you aware of any claim of any

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2 kind that NexPoint has ever made to try to  
3 recover the amounts that it contends were -- or  
4 that Mr. Sauter contend were mistakenly applied  
5 against principal and interest due under the  
6 NexPoint note?

7 A. I'm not aware.

8 MS. DANDENEAU: Objection to form.

9 Q. Okay. The advisors' agreements with  
10 the retail funds are subject to annual renewal;  
11 correct?

12 A. Yes.

13 Q. And do you participate in the  
14 renewal process each year?

15 A. Yes.

16 Q. What role do you play in the renewal  
17 process?

18 A. I'm -- I'm asked by the retail board  
19 to walk-through the advisors financials.

20 Q. And do you do that in the context of  
21 a board meeting?

22 A. Yes, it is -- yes, it is typically  
23 done in a board meeting.

24 Q. And do you recall the time --  
25 does -- does the renewal process happen around



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2 the same time each year?

3 A. Yes, it is -- it is around the same  
4 time every year.

5 Q. And what -- what time period of the  
6 year does the renewal process occur?

7 A. Approximately the September  
8 timeframe.

9 Q. During that process, in your  
10 experience, does the board typically conduct  
11 its own diligence and ask for information?

12 A. Does the board ask for lots of -- I  
13 mean, just -- I mean, lots of information as a  
14 part of that -- that -- as part of that board  
15 meeting and that process.

16 Q. Okay. And do you recall that the  
17 process in 2020 spilled into October?

18 A. Yes. Yes.

19 Q. Okay. And as part of the process in  
20 2020, the retail board asked -- asked what are  
21 referred to as 15(c) questions; right?

22 A. I guess I don't want to be -- they  
23 asked 15(c) -- are you saying they asked 15(c)  
24 questions and this is why it went into October  
25 or --

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2 Q. No, I apologize.

3 Do you have an understanding of  
4 what -- of what 15(c) refers to in the context  
5 of the annual renewal process?

6 A. Yes, generally.

7 Q. All right. What is your general  
8 understanding of the term "15(c)" in the  
9 context of the annual renewal process?

10 A. I -- I think 15(c) is the section  
11 that -- that -- you know, that -- that the  
12 board has to evaluate every year, the retail  
13 board. They have to, you know, go through,  
14 evaluate, and go through that approval process  
15 on a yearly basis.

16 Q. Okay.

17 MR. MORRIS: Can we put up on the  
18 screen Exhibit 36, please.

19 (Exhibit 36 marked.)

20 MR. MORRIS: I guess let's just  
21 start at the bottom so Mr. Waterhouse can  
22 see what is here.

23 Q. You see this begins with an email  
24 from Blank Rome to a number of people.

25 MR. MORRIS: And if we can scroll

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2 up -- keep going just a little bit.

3 Q. You will see that there is an email  
4 from Lauren Thedford to Thomas Surgent and  
5 others where she reports that she was attaching  
6 and reproducing below additional 15(c)  
7 follow-up questions from the board.

8 Do you see that?

9 A. Yes.

10 Q. And do you see Question No. 2 asks  
11 whether there are any material outstanding  
12 amounts currently payable or due in the future  
13 (e.g., notes) to HCMLP by HCMFA or NexPoint  
14 Advisors or any other affiliate that provides  
15 services to the funds?

16 Do you see that?

17 A. Yes.

18 Q. And -- and did you -- do you recall  
19 that in -- in October of 2020 the retail boards  
20 were asking for that information?

21 A. I don't recall it, but there --  
22 they're obviously asking in this email.

23 Q. Okay.

24 MR. MORRIS: Can we scroll up a  
25 little bit, please.

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2 Q. And then do you see that  
3 Ms. Thedford includes you on the email string  
4 on Tuesday, October 6th, at 5:52?

5 A. Yes.

6 Q. And she asks you and Dave Klos and  
7 Kristin Hendrix for advice on that particular  
8 Request No. 2 that I have just read; right?

9 A. Yes.

10 Q. Okay. Can you tell me who  
11 Ms. Thedford is?

12 A. She was an attorney that was in the  
13 legal group.

14 Q. At Highland Capital Management,  
15 L.P.?

16 A. I'm -- I'm -- I'm -- I don't  
17 remember if she was an employee of Highland or  
18 any of the advisors.

19 Q. Okay. Do you know if she served as  
20 the corporate secretary for both HCMFA and  
21 NexPoint?

22 A. Yes.

23 Q. And -- okay.

24 Do you know whether Ms. Thedford  
25 held any positions in relation to the retail

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2 funds as we defined that term?

3 A. Yes.

4 Q. What is your understanding of the  
5 positions that Ms. Thedford held at the retail  
6 funds?

7 A. I -- I recall her being an officer.  
8 I don't recall her title.

9 Q. Okay. Is she still an officer at  
10 any of the retail funds today?

11 A. No.

12 Q. Do you know when she ceased to be an  
13 officer of the retail funds?

14 A. Approximately.

15 Q. And when did she approximately cease  
16 to be an officer of the retail funds?

17 A. It was in -- it was in early of  
18 2021.

19 Q. Okay. Do you know when she became  
20 an officer of the retail funds?

21 A. I don't recall.

22 Q. To the best of your recollection,  
23 was she an officer of the retail funds in  
24 October of 2020?

25 A. I believe so.

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2 Q. Okay. Do you know what title she  
3 held in her capacity as an officer, if any?

4 A. I told you I don't remember.

5 Q. Okay. So she sends this email to  
6 you at 5:52 p.m. on October 6th.

7 And if we can scroll up to the  
8 response, you responded a minute later with a  
9 one-word answer: Yes.

10 Do you see that?

11 A. Yes.

12 Q. And -- and yes is -- yes was in  
13 response to the retail board's Question No. 2,  
14 right, whether there are any material  
15 outstanding amounts currently payable or due in  
16 the future?

17 A. Yes.

18 MR. MORRIS: And can we scroll up to  
19 see what happened next.

20 Q. So Ms. Thedford writes back to you a  
21 few minutes later and she asks whether you  
22 could provide the amounts.

23 Do you see that?

24 A. Yes.

25 Q. And then you respond further and you

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2 refer her to the balance sheet that was  
3 provided to the board as part of the 15(c)  
4 materials.

5 Do you see that?

6 A. Yes.

7 Q. And -- and did the advisors provide  
8 to the board certain balance sheets in 2020 in  
9 connection with the 15(c) review?

10 A. Yes, they did.

11 Q. Okay. And were the amounts that  
12 were outstanding or that were to be due in the  
13 future by the advisors to Highland included in  
14 the liability section of the balance sheet that  
15 was given to the retail board?

16 A. Yes. Notes would be reflected as  
17 liabilities.

18 Q. Okay. And --

19 A. If I'm understanding your question  
20 correctly.

21 Q. You are. And -- and -- and those  
22 liabilities you -- you were -- you believed  
23 were responsive to the retail board's question;  
24 correct?

25 A. Yes.

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2 Q. Okay. And then if we can scroll up,  
3 you see Ms. Thedford responds to you  
4 nine minutes later with a draft response.

5 Do you see that?

6 A. Yes.

7 Q. And she says that she is taking from  
8 the 6/30 financials certain information about  
9 amounts that were due to HCMLP and affiliates  
10 as of June 30th, 2020.

11 Do you see that?

12 A. I do.

13 Q. Okay. And did you believe, as the  
14 treasurer of NexPoint and HCMFA and as the CFO  
15 of Highland, that the information that  
16 Ms. Thedford obtained from the 6/30 financials  
17 was accurate and responsive in relation to the  
18 retail fund board's question?

19 A. I just want to make sure I  
20 understand the question.

21 Are you saying that the financial  
22 information provided to the retail board as  
23 part of the 15(c) process, which included  
24 financial statements as of June 30th of 2021,  
25 did I feel like those were responsive to their



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2 questions?

3 Q. Yes.

4 A. Yes.

5 Q. Thank you.

6 MS. DEITSCH-PEREZ: John, it is not  
7 in the chat yet. Can you just make sure it  
8 gets put in there.

9 MR. MORRIS: Sure.

10 MS. CANTY: I put it in there. I  
11 think maybe I just sent it directly, so let  
12 me make sure it says to everyone. But I  
13 did put it in there. I will try again.

14 MR. MORRIS: Thank you, La Asia.

15 MS. DANDENEAU: What number is it.

16 MR. MORRIS: What, the Bates number?

17 MS. DEITSCH-PEREZ: No, the --  
18 this -- yeah, 36 is not in the chat.

19 MR. MORRIS: Okay. We'll get it.

20 MS. DANDENEAU: I think that  
21 Ms. Canty just sent it to me originally.  
22 Sorry.

23 MR. MORRIS: Okay. We will get it  
24 there.

25 MS. CANTY: Okay. It is there now

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2 for everyone.

3 MS. DEITSCH-PEREZ: Got it. Thank  
4 you.

5 Q. Do you recall if the proposed  
6 response that Ms. Thedford crafted was  
7 delivered to the retail board with the -- with  
8 the yellow dates having been completed?

9 A. I don't know.

10 MR. MORRIS: Davor, I'm going to ask  
11 that the advisors and -- the advisors of  
12 both HCMFA and NexPoint produce to me any  
13 report that was given to the retail board  
14 concerning the promissory notes at issue,  
15 including the obligations under the notes.

16 Q. Do you know -- do you know if  
17 ultimately NexPoint informed the retail board  
18 in response to its question that NexPoint owed  
19 Highland approximately 23 or \$24 million?

20 MS. DANDENEAU: Objection to the  
21 form.

22 A. Sorry, are you asking, did NexPoint  
23 tell the retail board that it owed Highland?

24 Q. Let me ask a better question,  
25 Mr. Waterhouse.

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2 Did -- do you know if anybody ever  
3 answered the retail board's question that was  
4 Number 2?

5 A. I don't -- I can't say for sure.

6 Q. Okay. Do you recall -- I think you  
7 testified earlier that you walked through the  
8 advisors' financials with the retail board;  
9 correct?

10 A. Yes.

11 Q. And as part of that process, did you  
12 disclose to the retail board the obligations  
13 that NexPoint and HCMFA had to Highland under  
14 promissory notes?

15 A. The retail board, as I stated  
16 earlier, receives financial information,  
17 balance sheet, income statement information  
18 from the advisors. That information is  
19 provided to the retail board in connection with  
20 the 15(c) process.

21 So any notes between the advisors  
22 and the Highland would be -- anything would be  
23 detailed in those financial statements.

24 Q. Do you recall in 2020 ever speaking  
25 with the retail board about the advisors'

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2 obligations under the notes to Highland?

3 MS. DANDENEAU: Objection to form.

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. I don't recall specifically.

7 Q. Do you have any general recollection  
8 of discussing with the retail board the  
9 advisors' obligations to Highland under the  
10 notes that they issued?

11 MS. DANDENEAU: Object to the form.

12 MS. DEITSCH-PEREZ: Object to the  
13 form.

14 A. I just recall generally just -- it  
15 is just -- I present the financial statements,  
16 and if they have questions, I answer their  
17 questions and walk them through.

18 I don't recall what they asked. I  
19 don't recall where the discussion went. I  
20 don't recall anything of that nature.

21 Q. Okay. Do you know if anybody on  
22 behalf of HCMF -- HCMFA ever told the retail  
23 board that HCMFA had no obligations under the  
24 two 2019 notes that you signed? Withdrawn.

25 Do you know whether anybody on

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2 behalf of HCMFA ever told the retail boards  
3 that you weren't authorized to sign either of  
4 the two 2019 notes?

5 MS. DANDENEAU: Objection to form.

6 A. I'm not aware.

7 Q. Are you aware of anybody on behalf  
8 of HCMFA ever telling the retail boards that  
9 your execution of the two 2019 notes was a  
10 mistake?

11 MS. DANDENEAU: Objection to form.

12 A. I'm not aware.

13 Q. Are you aware of anybody on behalf  
14 of HCMFA ever telling the retail boards that  
15 HCMFA did not have to pay the amounts reflected  
16 in the two notes that you signed in 2019?

17 A. I'm not aware.

18 Q. Do you know whether anybody ever  
19 told the retail boards -- withdrawn.

20 Do you know whether anybody ever  
21 told the retail boards that Highland has  
22 commenced a lawsuit to recover on the two notes  
23 that you signed in 2019?

24 A. I'm not aware.

25 Q. Are you aware of anybody informing

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2 the retail boards that Highland has sued to  
3 recover on the NexPoint note?

4 A. I'm not aware.

5 Q. Do you know whether anybody ever  
6 told the retail board that Highland had  
7 declared a default with respect to the two  
8 HCMFA notes that you signed in 2019?

9 A. I'm not aware.

10 Q. Are you aware of anybody ever  
11 informing the retail boards that Highland had  
12 declared a default under the NexPoint note?

13 A. I'm not aware.

14 Q. Are you aware of anybody telling the  
15 retail board that Highland made a demand for  
16 payment under the 2019 notes that you signed on  
17 behalf of HCMFA?

18 A. I'm not aware.

19 Q. Let's -- let's see if there is a  
20 response to Ms. Thedford's email, if we can  
21 scroll up.

22 Do you see you responded to  
23 Ms. Thedford five minutes after she provided  
24 the draft response to you?

25 A. Yes.

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2 Q. Okay. And do you see that Dustin  
3 Norris is copied on this email?

4 A. Yes, he is.

5 Q. Great. Do you know whether  
6 Mr. Norris held any positions at either of the  
7 advisors as of October 6, 2020?

8 A. I will go back to -- I'm not the  
9 legal expert of what appoints you or how or  
10 why, but you did see Dustin's name on the  
11 incumbency certificate that you produced  
12 earlier.

13 Q. Do you know what his title was in  
14 October of 2020?

15 MS. DANDENEAU: Objection to form.

16 A. I don't -- I don't recall.

17 Q. Was he -- did he have a title with  
18 each of the advisors, to the best of your  
19 recollection?

20 A. I don't recall.

21 Q. Do you know why he is included on  
22 this email string?

23 A. I didn't add Dustin. It looks like  
24 Lauren did. I don't know why she added him or  
25 not. You would have to ask her.

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2 Q. Does Mr. Norris play a role in  
3 formulating the advisors' responses to the  
4 questions asked by the retail board in  
5 connection with the 15(c) annual review?

6 MS. DANDENEAU: Objection to form.

7 A. He -- Dustin Norris is there in the  
8 board meetings. But -- so he has a role, yes.

9 Q. Okay. And does Mr. Norris hold any  
10 positions, to the best of your knowledge, in  
11 relation to any of the retail funds?

12 A. I don't -- I don't believe he does.

13 Q. How about Mr. Post, do you know  
14 whether Mr. Post holds any position in either  
15 of the advisors?

16 A. I mean, he -- he -- yes.

17 Q. What is your understanding of the  
18 positions that Mr. Post holds in relation to  
19 the advisors?

20 MS. DANDENEAU: Objection to form.

21 A. He is an employee of NexPoint  
22 Advisors. He is also the chief compliance  
23 officer for -- for NexPoint.

24 Q. Who is the chief compliance officer  
25 for HCMFA, if you know?



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2 MS. DANDENEAU: Objection to form.

3 A. That would be Jason as well.

4 Q. Okay. Now, looking at your  
5 response, you noted initially that nothing was  
6 owed under shared services. Do I have that  
7 right in substance?

8 A. Yeah. I think I'm being responsive  
9 to Lauren's question here, whether any of the  
10 shared service invoices are outstanding.

11 Q. Right.

12 A. Yes.

13 Q. And that is because -- and that is  
14 because the retail the retail board has asked  
15 for the disclosure of all material obligations  
16 that were owed to HCMLP either then or in the  
17 future; isn't that right?

18 MS. DANDENEAU: Objection to form.

19 Q. We can go back down and look.

20 A. Look, I don't know if that's a  
21 material item, I mean, again, but sure.

22 Q. Okay. But there were no shared  
23 services outstanding; correct?

24 MS. DANDENEAU: Objection to form.

25 A. That is what this email seems to

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2 indicate.

3 Q. And you wouldn't have written it if  
4 you didn't believe it to be true at the time;  
5 correct?

6 A. Correct.

7 Q. And when you referred to shared  
8 services outstanding, what you meant there was  
9 that neither NexPoint nor HCMFA owed Highland  
10 any money under the shared services agreements  
11 that they had with Highland as of October 6th,  
12 2020; right?

13 A. I don't know if it is as of October  
14 6, 2020 or if it was from -- like through the  
15 financials -- through the date of the  
16 financials as of June 30.

17 Q. Okay. And then you noted that  
18 HCMA -- the HCMFA note is a demand note; right?

19 A. Yes.

20 Q. And then you referred Ms. Thedford  
21 to Kristin Hendrix for the term of the NexPoint  
22 note. Do I have that right?

23 A. Yes.

24 Q. And then you refer to that agreement  
25 that is referenced in the 2018 audited

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2 financials about Highland's agreement not to  
3 make demand upon HCMFA until May 2021; correct?

4 A. Correct.

5 Q. And then -- and then the next thing  
6 you write is that the attorneys think that BK  
7 doesn't change that, but don't know for sure at  
8 the end of the day.

9 Do you see that sentence?

10 A. Yes.

11 Q. Which attorneys were you referring  
12 to?

13 A. I don't remember.

14 Q. Did you have a conversation with  
15 attorneys concerning whether the bankruptcy  
16 would change or alter in any way the agreement  
17 not to make a demand under the HCMFA note?

18 A. Look, yeah, I mean, I don't  
19 specifically remember, but generally, I mean,  
20 it is in this email. I don't -- I don't -- I  
21 don't -- I don't remember who I talked to or,  
22 you know, was it inside counsel, outside  
23 counsel, but obviously I talked to somebody.

24 Q. Do you have any recollection --

25 A. Well, I don't even know if it's --

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2 actually, it may not even have been me. I say  
3 the attorneys in, you know, a lot of -- like I  
4 talked about the team.

5 It could have been someone on the  
6 team, like, hey, we need to run this down, and  
7 maybe they talked to attorneys again and  
8 relayed that information to me.

9 So I really don't know if I spoke or  
10 someone else did or -- or, I mean, and maybe it  
11 wasn't even from corporate accounting. Maybe  
12 it was, you know, other -- I'm kind of  
13 summarizing, you know, again, so I don't really  
14 know -- I can't really say for sure. I don't  
15 remember how I came about of this knowledge.

16 Q. I appreciate your efforts,  
17 Mr. Waterhouse, but I will just tell you that  
18 if I ask a question and you don't know the  
19 answer or you don't recall, I'm happy to accept  
20 that. I don't -- I don't want you to  
21 speculate, so I want to be clear about that.  
22 So I appreciate it.

23 Let me just ask you simply: Do you  
24 know what attorneys -- can you identify any of  
25 the attorneys who thought that the bankruptcy

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2 process didn't change the agreement?

3 A. I don't recall.

4 Q. Okay. Perfect.

5 And then let's look at the last  
6 sentence. It says, quote: The response should  
7 include, as I covered in the board meeting,  
8 that both entities have the full faith and  
9 backing from Jim Dondero, and to my knowledge  
10 that hasn't changed.

11 Do you see that?

12 A. Yes.

13 Q. Okay. Prior to October 6th, 2020,  
14 had you told the retail board that HCMFA and  
15 NexPoint have the full faith and backing from  
16 Jim Dondero?

17 A. Yes.

18 Q. Do you remember in the context in  
19 which you told the retail board that?

20 A. I mean, generally, yes.

21 Q. Tell me what you recall.

22 A. So we were walking through the  
23 financials from the advisors; right? So as I  
24 described to you, you have got HCMFA and NPA.  
25 And these -- the financials, you know, show

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2 they have liabilities on them that exceed  
3 assets.

4 So the retail board has asked, okay,  
5 you know, how -- you know, if -- if these  
6 liabilities come due or they're payable, you  
7 know, how does that come about?

8 And, you know, the response is,  
9 well, the advisors have the -- the full faith  
10 and backing from -- from Jim Dondero.

11 Q. And how did you know that the  
12 advisors had the full faith and backing from  
13 Jim Dondero? What was the basis for that  
14 statement that you made to the retail board?

15 A. I talked to Jim about it at some  
16 point in the past.

17 Q. And did you tell Mr. Dondero that  
18 you were going to inform the retail board that  
19 the advisors had his full faith and backing  
20 before you actually told that to the retail  
21 board?

22 A. I don't recall having that  
23 conversation.

24 Q. Do you recall if you ever informed  
25 Mr. Dondero that you had disclosed or told the

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2 retail board that the advisors had the full  
3 faith and backing of Mr. -- Mr. Dondero?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. I don't recall discussing that with  
7 him at the time.

8 Q. When you told this to the board, was  
9 Mr. Dondero participating in the discussion?

10 A. Not that I recall.

11 Q. Withdrawn. Was it not -- withdrawn.

12 Do you recall whether -- when you  
13 covered this issue with the board, was that in  
14 a -- a Zoom call or a Webex call? Was it a  
15 telephone call? Was it in-person? Like where  
16 were you physically in relation to the board?

17 A. I believe I was at home.

18 Q. Okay. Can you identify every person  
19 that you recall who was present for this  
20 disclosure other than -- other than the board  
21 members themselves?

22 MS. DEITSCH-PEREZ: Object to the  
23 form.

24 A. I don't recall everyone on the call.

25 Q. Can you identify anybody who was on

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the call?

A. Other than the board members?

Q. Yes.

A. Lauren Thedford. I mean, there are -- there are many -- my section is just one of many sections that are just -- you know, as you can appreciate, this is a long board meeting.

I can't recall specifically, really even generally, or who was on when this was discussed. But Lauren was typically on for the entire time.

Q. I apologize if I asked you this, but do either of Mr. Norris or Mr. Post hold any positions relative to the retail funds?

A. I think you asked me this already, John.

Q. Okay. I just don't recall. Can you just refresh my recollection if I did, in fact, ask you the question?

A. I don't believe -- if we can go back. I don't believe Mr. Norris has a title at the retail funds. Mr. -- and Mr. Post is the CCO of the advisor, the advisors.



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2 Q. Okay. Do you know if either of them  
3 have a position with the retail board -- with  
4 the retail funds?

5 A. I don't believe Mr. Norris has a  
6 position with the retail funds.

7 Q. All right. What about Mr. Post?

8 A. Mr. Post is the CCO of the advisors.

9 Q. Okay. Does he hold any position --

10 A. I don't believe so.

11 Q. -- with the retail funds?

12 A. I don't believe so.

13 Q. Okay.

14 A. I don't know if being the CCO for  
15 the advisor conveys something for the retail  
16 funds. Again, I am not -- that is the legal  
17 compliance part of it. I don't know.

18 Q. Why did you tell the retail board  
19 that the advisors have the full faith and  
20 backing from Mr. Dondero?

21 MS. DANDENEAU: Objection to form.

22 A. It is -- it is -- it is what has  
23 been discussed with them prior.

24 Q. And were you -- were you trying to  
25 give them comfort that even though the

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2 liabilities exceeded the assets that the  
3 advisors would still be able to meet their  
4 obligations as they become due?

5 MS. DANDENEAU: Objection to form.

6 MS. DEITSCH-PEREZ: Object form.

7 A. I -- I can't -- I don't remember  
8 specifically the conversation, but generally --  
9 you know, generally, yes. And that is why --  
10 but, you know, again, in this email saying, you  
11 know, I am sure I qualified it with the retail  
12 board, you know, as I said I like -- you know,  
13 to my knowledge, that hasn't changed. But,  
14 again, generally -- generally that is what I  
15 remember.

16 Q. Okay. Do you recall if in the  
17 advisors' response to the retail board's  
18 question if the response included any statement  
19 concerning Mr. Dondero and -- and the full  
20 faith and backing that he was giving to the  
21 advisors?

22 MS. DEITSCH-PEREZ: Object to the  
23 form.

24 A. I don't -- I don't remember  
25 specifically what was provided.

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2 Q. Okay.

3 A. And I don't really -- I don't really  
4 remember generally either.

5 Q. Okay.

6 MR. MORRIS: So -- so, again, I'm  
7 just going to ask Mr. Rukavina if your  
8 clients can produce as soon as possible the  
9 15(c) response, the written response that  
10 the advisors made, if any, to the board's  
11 Question No. 2.

12 I'm not looking for the whole  
13 response, but I certainly want the response  
14 to Question No. 2.

15 Q. Do you have a general understanding  
16 as to the amount by which -- withdrawn.

17 Did -- did the assets of --  
18 withdrawn.

19 Did the liabilities of HCMFA exceed  
20 its assets in 2020?

21 MS. DANDENEAU: Objection to form.

22 MS. DEITSCH-PEREZ: Objection, form.

23 A. I believe I have already answered  
24 that question earlier, I think. I believe I  
25 said yes.

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2 Q. Okay. And did the liabilities of  
3 NexPoint exceed its assets in 2020?

4 MS. DEITSCH-PEREZ: Objection to  
5 form.

6 A. I don't believe so.

7 Q. Okay. So -- so it was only one of  
8 the two advisors who had liabilities that  
9 exceeded the value of the assets.

10 Do I have that right?

11 MS. DEITSCH-PEREZ: Objection to  
12 form.

13 MS. DANDENEAU: Form.

14 A. Yes.

15 Q. And do you know, ballpark, the  
16 amount by which the value of HCMFA's  
17 liabilities exceeded their assets in 2020?

18 MS. DANDENEAU: Objection to form.

19 A. I don't -- I don't recall.

20 MR. MORRIS: I had specifically  
21 requested in discovery the audited  
22 financial reports for both advisors and  
23 NexPoint. I think I may have gotten one  
24 for NexPoint but I'm still waiting for the  
25 balance. And I'm going to renew my request

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2 for those documents too.

3 Q. Let's go to the next exhibit, which  
4 is Number 10. So I think it is in your stack,  
5 Mr. Waterhouse.

6 MR. MORRIS: And we can take the one  
7 down from the screen and put up Number 10  
8 for everybody.

9 (Exhibit 10 marked.)

10 Q. And I don't know if you have ever  
11 seen this before, but I'm really putting it up  
12 on the screen for purposes of turning to the  
13 very last page of the document.

14 So this is a document that we have  
15 been -- that we premarked as Exhibit 10. And  
16 we're turning to the last page of the document,  
17 which is a document that was filed in the  
18 adversary proceeding 21-3004. And -- no, I  
19 apologize, I think we -- right there. Perfect.

20 And it is page 31 of 31.

21 MR. MORRIS: I think there may have  
22 been some something erroneously stapled to  
23 the hard copy that I gave you folks, but  
24 I'm looking for page 31 of 31 in the  
25 document that begins with the first page of

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2 Exhibit 10.

3 Q. Do you have that, Mr. Waterhouse?

4 A. I don't have it yet. I'm looking.

5 Q. All right. If you look at the top  
6 right-hand corner, you will see it says page  
7 hopefully something of 31?

8 A. Yes, I've got it now.

9 Q. Okay. You have got 31 of 31. You  
10 can take a moment to read that, if you would  
11 like.

12 A. (Reviewing document.) Okay.

13 Q. Have you ever seen this before?

14 A. I don't know if I have seen this  
15 specific document, but, you know, I've --  
16 I'm -- I'm aware of it.

17 Q. And is this the document that you  
18 had in mind when you sent that email to  
19 Ms. Thedford that we just looked at where you  
20 said that Highland had agreed not to make a  
21 demand upon HCMFA until May 2021?

22 A. Honestly, I don't -- it wasn't this  
23 document. I mean, it's something like this,  
24 yes. I mean, yes.

25 Q. Well --

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2 A. It is something like this, but I  
3 don't think it was this specific document.

4 Q. Well, but this document does say in  
5 the last sentence that Highland agreed not to  
6 seek -- not to demand payment from HCMFA prior  
7 to May 31, 2021; right?

8 A. Yes.

9 Q. And are you aware of any other  
10 document that was ever created pursuant to  
11 which Highland agreed not to demand payment on  
12 amounts owed by HCMFA before May 31, 2021?

13 A. Hold on. Are you asking, am I aware  
14 of a document that by HCMFA that basically says  
15 otherwise?

16 Q. No. Let me try again.

17 Are you aware of any other document  
18 pursuant to which -- pursuant to which Highland  
19 agreed not to make a demand on HCMFA until May  
20 31st, 2021?

21 A. I'm -- I think there was something  
22 in connection with -- with the -- with the  
23 audit that basically says the same thing.

24 Q. Okay. And do you think that the  
25 audit is referring to this particular document?

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2 A. I don't know.

3 Q. All right. This document is dated  
4 April 15, 2019. Do you see that?

5 A. I do.

6 Q. And do you remember that the audit  
7 was completed on June 3rd, 2019?

8 A. Yes.

9 Q. And do you recall that the audited  
10 financials -- and I'm happy to pull them up if  
11 you would like, but do you recall that the  
12 audited financials included a reference to the  
13 agreement pursuant to which Highland agreed not  
14 to make a demand until May 31st, 2021?

15 A. Yes, I remember.

16 Q. And as part of the process, would  
17 you have expected the corporate accounting team  
18 to have provided a copy of this document to  
19 PwC?

20 MS. DANDENEAU: Objection to form.

21 A. Yes, I would have expected something  
22 like this, or again, you know, some document  
23 that basically states -- states the deferral  
24 till May 31 of 2020.

25 Q. Okay.



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2 A. May 31 of 2021, excuse me.

3 Q. And this document states the  
4 deferral that you just described; correct?

5 A. It does.

6 Q. And this document states the  
7 deferral that was described in the audited  
8 financial statements that we looked at before;  
9 correct?

10 A. It does.

11 MR. MORRIS: Okay. Can we scroll  
12 down just a little bit to see who signed on  
13 behalf of the acknowledgment there.

14 Q. Okay. So Mr. Dondero signed this  
15 document on behalf of both HCMFA and Highland;  
16 do you see that?

17 A. I do.

18 Q. Okay. Did you discuss this document  
19 or the -- withdrawn.

20 Did you discuss the concept of the  
21 deferral with Mr. Dondero in the spring of  
22 2019?

23 A. I think I testified I don't recall.

24 Q. Okay. Do you know whose idea it was  
25 to issue the acknowledgment in this form?

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2 A. I don't recall.

3 MR. MORRIS: Can we scroll back up  
4 to the document, please.

5 Q. Do you see in the beginning it says,  
6 reference is made to certain outstanding  
7 amounts loaned from Highland to HCMFA for  
8 funding ongoing operations.

9 Do you see that?

10 A. Yes.

11 Q. And were you aware as the CFO of  
12 Highland and as the treasurer of HCMFA that as  
13 of April 15, 2019, Highland had made certain  
14 loans to HCMFA to fund HCMFA's ongoing  
15 operations?

16 A. Yes.

17 Q. And were you aware that those loans  
18 were payable on demand and remained outstanding  
19 as of December 31st, 2018?

20 A. Yes.

21 Q. And were you aware that those  
22 amounts were payable on demand, and they  
23 remained outstanding as of April 15, 2019?

24 MS. DEITSCH-PEREZ: Object to the  
25 form.

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2 A. Well, this -- this document dated  
3 April 15, 2019 says they have been deferred to  
4 May 31, 2021.

5 Q. Right. But I'm just sticking to the  
6 first paragraph where they refer to the  
7 outstanding amounts. And in the end it says  
8 the -- it remained outstanding on December  
9 31st, 2018, and I think you told me that you  
10 understood that, and then I'm just trying to  
11 capture the last piece of it.

12 Did you understand that there were  
13 amounts outstanding from the loan that Highland  
14 made to HCMFA to fund ongoing operations as of  
15 April 15th, 2019?

16 A. Yes.

17 Q. Thank you. Let's look at the next  
18 sentence. HCMFA expects that it may be unable  
19 to repay such amounts should they become due  
20 for the period commencing today and continuing  
21 through May 31st, 2021.

22 Do you see that?

23 MS. DANDENEAU: Objection to form.

24 A. I do.

25 Q. As the CFO -- withdrawn.

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2 As the treasurer of HCMFA, did you  
3 believe that -- do you believe that statement  
4 was true and accurate at the time it was  
5 rendered?

6 A. I mean, it -- it -- the answer to  
7 that is I really didn't have any -- I didn't  
8 have an opinion really.

9 Q. Did you do anything to educate  
10 yourself in April of 2019 on the issue of  
11 whether HCMFA could repay the amounts that it  
12 owed to Highland should they become due?

13 A. I don't believe so.

14 Q. Did you at any time form any  
15 opinions as to HCMFA's ability to repay all  
16 amounts due to Highland should they become due?

17 A. Not really. I guess I don't...

18 Q. Well, you told the retail board that  
19 HCMFA's liabilities exceeded their assets in  
20 2020; correct?

21 A. Yes.

22 Q. Based on the work that you did to  
23 prepare for the retail board, did you form any  
24 view as to whether HCMFA would be unable to  
25 repay the amounts that it owed to Highland

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2 should they become due?

3 MS. DANDENEAU: Objection to form.

4 A. I mean, I -- when you look at that,  
5 to answer you, completely, you know, again,  
6 if -- the response I gave the retail board was,  
7 you know, the -- the advice -- HCMFA advisors  
8 have the -- have the full faith and backing of  
9 Jim Dondero. So I didn't form an opinion of  
10 whether the advisor could pay it or not.

11 Q. Did you form any view as to whether  
12 the advisors could repay the amounts that it  
13 owed to Highland should they become due without  
14 the full faith and backing of Mr. Dondero?

15 MS. DANDENEAU: Objection to form.

16 MS. DEITSCH-PEREZ: Form.

17 A. I mean, if you -- if you -- if you  
18 take that last statement out, I mean, it would  
19 be difficult for HCMFA to pay back demand notes  
20 at that time.

21 Q. And it was precisely for that reason  
22 that you told the retail board that -- that the  
23 retail -- that the advisors had the full faith  
24 and backing of Mr. Dondero; correct?

25 MS. DANDENEAU: Objection to form.

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2 A. I mean, yes, as the mouthpiece, I  
3 was relaying information.

4 Q. Okay. And you relayed that  
5 information with the knowledge and approval of  
6 Mr. Dondero; correct?

7 MS. DEITSCH-PEREZ: Object to the  
8 form.

9 A. As I stated in the email, I don't  
10 believe, and I think I testified I don't  
11 believe I had conversations with Mr. Dondero at  
12 the time of that board meeting.

13 Q. Did you tell the retail board that  
14 the advisors had the full faith and backing of  
15 Mr. Dondero without Mr. Dondero's prior  
16 approval?

17 A. Yeah, I -- I -- yes, I'm -- like I  
18 said, I think I testified earlier, I'm sure I  
19 qualified it as well.

20 Q. What do you mean by that?

21 MS. DANDENEAU: Objection to form.

22 A. Again -- again, like I said in the  
23 email, it has the full faith and backing of Jim  
24 Dondero unless that has changed.

25 Q. Actually that is not what you said,

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2 so let's put the email back up.

3 A. It is -- it is -- it is in the  
4 email.

5 Q. Let's put the email back up. You  
6 didn't say unless it has changed. You said you  
7 believe it hasn't changed; right?

8 A. Okay. And to my knowledge that  
9 hasn't changed, that is what it says.

10 Q. That's right.

11 A. But, again, I mean, that is -- I  
12 don't know everything. And I'm not in every  
13 conversation. I'm not -- to presume that I am,  
14 is -- and you have to put myself -- as you  
15 started this out, Mr. Morris, I was at home in  
16 October of 2020 with COVID -- or, you know,  
17 under these COVID times that we described is  
18 very difficult.

19 We have all been working at home for  
20 really the first time ever, undergoing  
21 processes, procedures, control environments  
22 that have been untested, and there is poor  
23 communication.

24 So I am relaying, as I'm telling you  
25 now, what is in the email. And unless

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2 something has changed -- to my knowledge, it  
3 hasn't changed, but it could have changed.

4 Q. When you say that the advisors have  
5 the full faith and backing from Mr. Dondero,  
6 did you intend to convey that, to the extent  
7 the advisors were unable to satisfy their  
8 obligations as they become due, Mr. Dondero  
9 would do it for them?

10 MS. DANDENEAU: Object to the form.

11 MS. DEITSCH-PEREZ: Object to the  
12 form.

13 And, John, we have given you a lot  
14 of leeway here but this does not seem  
15 relevant to this case. You seem sort of  
16 taking a complete sort of diversion into  
17 the allegations and the complaint just  
18 filed on Friday, and so I would ask you to  
19 move on because --

20 MR. MORRIS: And I will tell you --  
21 I will tell you that I have never read that  
22 complaint cover-to-cover. I have nothing  
23 to do with the prosecution of those claims.  
24 And this issue that we're talking about  
25 right now is related solely to the



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2 promissory notes that your clients refuse  
3 to pay.

4 So I'm going to continue to ask my  
5 questions, and I would ask the court  
6 reporter to read back my last question.

7 (Record read.)

8 MS. DEITSCH-PEREZ: And then I  
9 believe there were objections to form.

10 Q. You can answer the question.

11 A. Yes.

12 Q. Thank you very much, sir.

13 MR. MORRIS: Can we go back to the  
14 other document, please?

15 Q. Mr. Waterhouse, do you know if this  
16 document was ever shared with the retail board?

17 A. I don't recall.

18 Q. Did you ever share it with the  
19 retail board?

20 A. I don't recall.

21 Q. Did you ever tell the retail board  
22 about the substance of this document?

23 A. I don't recall.

24 Q. Did you ever tell the retail board  
25 that Highland had agreed not to make a demand

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2 against HCMFA until May 2021?

3 A. I don't recall.

4 Q. Do you know whether anybody on  
5 behalf of the advisors ever informed the retail  
6 board that Highland had agreed on April 15,  
7 2019, not to make a demand against HCMFA under  
8 the promissory notes?

9 A. I don't recall.

10 Q. Did you instruct Ms. Thedford or  
11 anybody else responding to the retail board's  
12 15(c) inquiry to disclose this document?

13 A. Did I instruct Ms. Thedford or  
14 anyone else to -- to -- to produce this, to  
15 disclose this document? Is that what you -- I  
16 just want to make sure.

17 Q. Uh-huh.

18 A. Yeah, I don't -- I don't recall.

19 Q. Did you instruct anybody to inform  
20 the retail board, in response to their question  
21 as part of the 15(c) process, to -- to tell the  
22 retail board about Highland's agreement not to  
23 make a demand until 2021?

24 MS. DANDENEAU: Objection to form.

25 A. I don't recall.

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2 Q. Did you ever inform PwC that HCMFA's  
3 liabilities exceeded its assets?

4 MS. DANDENEAU: Object to the form.

5 A. I don't -- I don't think I told  
6 them. I mean, they -- they audited the  
7 financial statements.

8 Q. Did -- do you know if anybody on  
9 behalf of Highland ever informed  
10 PricewaterhouseCoopers that HCMFA may be unable  
11 to repay amounts owing to Highland, should they  
12 become due?

13 MS. DANDENEAU: Objection to form.

14 A. Yes. Again, I think I testified  
15 earlier that -- that this was communicated to  
16 the auditors.

17 Q. Ideally --

18 A. I don't know who exactly did that.  
19 I don't recall doing it, but, yeah, it was --  
20 it was communicated. And that is why -- I  
21 mean, there is a disclosure in the financial  
22 statements; right?

23 Q. There is, and that disclosure  
24 relates to the last sentence of this document;  
25 correct?

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2 A. Yes.

3 Q. Do you recall looking in the  
4 document and seeing anything that was disclosed  
5 with respect to the sentence above that?

6 A. No.

7 Q. Do you know whether anybody on  
8 behalf of Highland ever informed  
9 PricewaterhouseCoopers that HCMFA expects that  
10 it may be unable to repay amounts due and owing  
11 to Highland should they become due?

12 MS. DEITSCH-PEREZ: Object to the  
13 form. I think that is the third time.

14 A. I don't recall. Again, as I said,  
15 we -- all of this was given to the auditors.

16 Q. Do you know if Highland received  
17 anything of value in exchange for its agreement  
18 not to demand payment on amounts owed by HCMFA  
19 prior to May 31st, 2021?

20 MS. DEITSCH-PEREZ: Object to the  
21 form. That is the second time.

22 MS. DANDENEAU: Object to the form.

23 A. I have answered this question.

24 MR. RUKAVINA: Hold on. Object to  
25 legal conclusion. Go ahead.

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2 A. I have answered this question  
3 before.

4 Q. And the answer was no?

5 A. I'm not aware.

6 Q. Now, this acknowledgment can't  
7 possibly apply to the two notes that you signed  
8 on behalf of HCMFA because those notes were  
9 signed on May 2nd and May 3rd, 2019; is that  
10 right?

11 MS. DANDENEAU: Objection to form.

12 A. Unless there is a drafting error.

13 Q. Okay. Are you aware of a drafting  
14 error?

15 A. I'm not aware. I didn't -- I wasn't  
16 part of -- I didn't sign this note or this  
17 acknowledgment. I didn't draft it.

18 Q. But you do see it is dated April 15,  
19 2019; right?

20 A. Yes.

21 Q. And this was a document that was  
22 actually included by the advisors in a pleading  
23 they filed with the Court; right?

24 MR. RUKAVINA: Well, I don't know  
25 that so I object to form.

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2 Q. Okay. Let's go to the first page of  
3 the document and just confirm that.

4 MR. AIGEN: Mr. Morris, I just note  
5 that you already said there was some error  
6 with the document that is listed as  
7 exhibit --

8 MR. MORRIS: No. No, no, no.

9 MS. DEITSCH-PEREZ: Oh, okay.

10 MR. MORRIS: What I said is that  
11 there is a few pages that were mistakenly  
12 stapled to the end of the document.

13 MS. DEITSCH-PEREZ: Okay.

14 MR. MORRIS: There is no problem  
15 with this document.

16 MS. DEITSCH-PEREZ: And just so  
17 we're clear that the document -- the pages  
18 that start with defendant's amended answer  
19 are not intended to be part of this  
20 document?

21 MR. MORRIS: That's correct.

22 MS. DEITSCH-PEREZ: And that the --  
23 but it is your representation that the rest  
24 of the document is -- is -- is correct  
25 because we don't -- we don't have any way

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2 of verifying that, we're just --

3 MR. MORRIS: You do, actually. You  
4 could just go to Docket No. 21-3004.

5 MS. DEITSCH-PEREZ: If you want to  
6 stop this deposition so we can go and pull  
7 that document up, we're happy to do it. So  
8 I am just asking you for your  
9 representation.

10 MR. MORRIS: Sure. I gave that.

11 MS. DEITSCH-PEREZ: Okay.

12 Q. So do you see that this is a  
13 document that was actually filed with the Court  
14 by Highland Capital Management Fund Advisors?

15 A. No. I get with the first page in  
16 the section. Maybe I'm looking at the wrong  
17 thing. It says, Highland Capital Management.

18 Q. Don't worry about it. Don't worry  
19 about it.

20 A. Maybe I went back -- okay.

21 MR. MORRIS: All right. Can we put  
22 up on the screen Exhibit 2.

23 (Exhibit 2 marked.)

24 MR. MORRIS: I think it is  
25 Exhibit 1.

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2 MS. DANDENEAU: I'm sorry, John, did  
3 you say Exhibit 2 or Exhibit 1?

4 MR. MORRIS: It is Exhibit 2 in the  
5 binders so it is premarked Exhibit 2. And  
6 now I'm asking -- right there -- going to  
7 Exhibit 1 to the document that was marked  
8 as Exhibit 2.

9 MS. DANDENEAU: Got it. In the  
10 binder there is no --

11 MS. DEITSCH-PEREZ: There is no  
12 Exhibit 1.

13 MR. MORRIS: All right. So look at  
14 the one on the screen.

15 Q. Do you see, Mr. Waterhouse, that  
16 this is a promissory note dated May 31st, 2017,  
17 in the approximate amount of \$30.7 million?

18 A. Yes.

19 Q. And do you see that the maker of the  
20 note is NexPoint?

21 A. Yes.

22 Q. And that Highland is the payee; is  
23 that right?

24 A. Yes.

25 Q. Okay. And do you see in Paragraph 2



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2 this is an annual installment note?

3 A. Can you scroll down.

4 Q. Sure.

5 MR. MORRIS: Can we scroll down --

6 yeah, there you go.

7 A. Right there, yeah. Yes.

8 MR. MORRIS: And can we scroll down

9 to the signature line.

10 Q. And do you recognize that as

11 Mr. Dondero's signature?

12 A. Yes.

13 Q. And is this the promissory note that

14 we talked about earlier where NexPoint had made

15 certain payments in the aggregate amount of

16 about 6 to \$7 million against principal and

17 interest?

18 A. I don't recall discussing the

19 aggregate principal amounts of 6 to \$7 million,

20 but -- so I don't -- I don't recall that prior

21 discussion with those amounts.

22 Q. All right. Let's take a look.

23 NexPoint always included this promissory note

24 as a liability on its audited financial

25 statements; right?

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2 A. Yes.

3 Q. And NexPoint had its financial  
4 statements audited; isn't that correct?

5 A. Yes.

6 Q. And was the process of NexPoint's  
7 audit similar to the process you described  
8 earlier for Highland and HCMFA?

9 A. Yes, it is similar.

10 Q. Okay.

11 MR. MORRIS: Can we put up  
12 NexPoint's audited financials and let  
13 everybody know what exhibit number it is,  
14 La Asia?

15 MS. CANTY: It is going to be  
16 Exhibit 46.

17 (Exhibit 46 marked.)

18 Q. And do you see, sir, that we've put  
19 up NexPoint Advisors' consolidated financial  
20 statements and supplemental information for the  
21 period ending December 31st, 2019?

22 A. Yes.

23 Q. Did you participate in the process  
24 whereby these audited financial statements were  
25 issued?

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2 A. I didn't participate directly, as  
3 I've described before, about the -- the team  
4 performing the audit.

5 Q. Do you recall when the audit of  
6 NexPoint's financial statements for the period  
7 ending December 31st, 2019 was completed?

8 A. Yes.

9 Q. And when do you recall it being  
10 completed?

11 A. In January of 2021.

12 Q. Do you know why the 2019 audit  
13 report wasn't completed until January of 2021?

14 A. Yes.

15 Q. Why was the NexPoint audit report  
16 for the period ending 12/31/19 not completed  
17 until January 2021?

18 A. Because we had to deal with working  
19 from home from -- with COVID, and on top of all  
20 of our daily responsibilities and job duties  
21 at -- at providing -- at Highland providing  
22 services to NexPoint, we had to do all of this  
23 extra work for a bankruptcy that was filed in  
24 October of 2019.

25 MR. MORRIS: Can we go to the

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2 balance sheet on page 3? Okay. Stop right  
3 there.

4 Q. Do you see under the liabilities  
5 section, the last item is note payable to  
6 affiliate?

7 A. Yes.

8 Q. And is that the note that we just  
9 looked at?

10 MS. DANDENEAU: Objection to form.

11 Q. Withdrawn.

12 Is that the approximately  
13 \$30 million note that we just looked at that  
14 was dated from 2017?

15 MS. DANDENEAU: Objection to form.

16 A. I believe no.

17 Q. Okay. You're not aware of any other  
18 note that was outstanding from NexPoint to  
19 Highland as of the end of the year 2019, other  
20 than that one \$30 million note; right?

21 A. I don't recall.

22 Q. And as of the end of 2019, the  
23 principal amount that was due on the note was  
24 approximately \$23 million; right?

25 MS. DEITSCH-PEREZ: Object to the

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2 form.

3 A. Approximately.

4 Q. And does that refresh your  
5 recollection that between the time the note was  
6 executed and the end of 2019, that NexPoint had  
7 paid down approximately \$7 million?

8 A. Yes. If we are just doing the math,  
9 yes.

10 Q. Okay. Did NexPoint complete its  
11 audit from 2020?

12 A. Sorry, you kind of broke up. Do  
13 NexPoint complete?

14 Q. The audit of its financial  
15 statements for the period ending December 31st,  
16 2020?

17 A. No.

18 Q. No, it's not complete?

19 A. No, it is not complete.

20 Q. Did HCMFA complete its audit for the  
21 year ending December 31st, 2020?

22 A. No.

23 MR. MORRIS: Can we go to page 15,  
24 please, the paragraph at the bottom.

25 Q. Do you see that NexPoint has

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2 included under notes payable to Highland a  
3 reference to the amounts that were outstanding  
4 as of the year-end 2019 under the note that we  
5 looked at just a moment ago?

6 A. Yes. Are you talking about the  
7 second paragraph?

8 Q. I'm actually talking about first  
9 paragraph. Do you understand that the first  
10 paragraph is a reference to the 2017 note, and  
11 the amounts that were -- the principal amount  
12 that was outstanding as of the end of 2019?

13 MS. DANDENEAU: Objection to form.

14 John, do you mean the first paragraph of  
15 that page?

16 MR. MORRIS: No, the first paragraph  
17 under notes payable to Highland.

18 A. Yeah, I see the paragraph, and  
19 again, this is what I answered earlier. I  
20 believe so, just because I don't -- again, this  
21 is a number in a balance sheet, and without  
22 matching it up and seeing the detail with the  
23 schedule like I kind of talked about for  
24 Highland's financial statements, it is a little  
25 bit more difficult to tie everything in

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2 perfectly together.

3 Q. Okay. But you're not aware of any  
4 note that was outstanding at the end of 2019  
5 from NexPoint to Highland other than whatever  
6 principal was still due and owing under the  
7 \$30 million note issued in 2017; correct?

8 A. Well, it -- I don't -- there is  
9 reference in the second paragraph. I don't --  
10 I don't -- I don't recall what that is  
11 referring to, so I don't -- I don't know.

12 Q. Well, if you listen carefully to my  
13 question, right, I'm asking about notes that  
14 were outstanding at the end of 2019, and if we  
15 look at the paragraph you just referred to, it  
16 says that during the year there were new notes  
17 issued totaling \$1.5 million, but by the end of  
18 the year, no principal or interest was  
19 outstanding on the notes.

20 Do you see that?

21 A. Oh, I do, yes.

22 Q. So does that refresh your  
23 recollection that there were no notes  
24 outstanding from NexPoint to Highland other  
25 than the principal remaining under the original

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2 \$30 million 2017 note that we looked at a  
3 moment ago?

4 A. Well, we're at the bottom of the  
5 page. Is there anything on page 16?

6 Q. That is a fair question, sure. That  
7 is it.

8 A. Okay. So it appears that that is  
9 the only note that is detailed in the notes in  
10 the financial statement.

11 Q. And you don't have any memory of any  
12 other note other than the 2017 note, right,  
13 being outstanding as of the end of the year?

14 A. I deal with thousands of  
15 transactions every year. I don't really have a  
16 very specific memory for what exactly was  
17 outstanding.

18 MR. MORRIS: Why don't we take a  
19 break now. We've been going for a little  
20 while. It's 3:26. Let's come back at  
21 3:40.

22 VIDEOGRAPHER: We're going off the  
23 record at 3:26 p.m.

24 (Recess taken 3:26 p.m. to 3:39 p.m.)

25 VIDEOGRAPHER: We are going back on



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2 the record at 3:39 p.m.

3 Q. All right. Mr. Waterhouse, we -- I  
4 don't think we have a lot more here.

5 To the best of your knowledge and  
6 recollection, were all affiliate loans and all  
7 loans made to Mr. Dondero recorded on  
8 Highland's books and records as assets of  
9 Highland?

10 MS. DANDENEAU: Object to the form,  
11 asked and answered.

12 A. To my knowledge, yes.

13 Q. Okay. Can you recall any loan to  
14 any affiliate or Mr. Dondero that was not  
15 recorded on Highland's books and records as an  
16 asset?

17 A. Like during my time as CFO? I don't  
18 recall.

19 Q. How about after the time that you  
20 were CFO? Did you recall that there was a loan  
21 by Highland to an affiliate or to Mr. Dondero  
22 that hadn't been previously recorded on  
23 Highland's books as an asset?

24 MS. DANDENEAU: Objection to form.

25 A. I guess I don't understand the

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2 question. I left Highland as of -- I'm not  
3 aware of -- I left Highland in February --  
4 probably the last day of February of 2021.

5 Q. Okay.

6 A. I'm not -- I'm not aware of any --  
7 I'm not aware of anything past that date.

8 Q. Okay. While you were the CFO at  
9 Highland, did Highland prepare in the ordinary  
10 course of business a document that reported  
11 operating results on a monthly basis?

12 A. Yes.

13 Q. And are you generally familiar with  
14 the monthly operating reports?

15 A. Yeah. You are referring to the  
16 reports that we filed to the Court every month?

17 Q. I apologize, I'm not. I'm taking  
18 you back to the pre-petition period. There was  
19 a report that I have seen that I'm going to  
20 show you, but I'm just asking for your  
21 knowledge.

22 MR. MORRIS: Let's put it up on the  
23 screen, Exhibit 39.

24 (Exhibit 39 marked.)

25 Q. Do you see this is a document that

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2 is called operating results?

3 A. Yeah, that's the title of it.

4 Q. Okay. And was a report of operating  
5 results prepared by Highland on a monthly basis  
6 during the time that you served as CFO?

7 A. No.

8 Q. Are you familiar with a document of  
9 this type? And we can certainly look at the  
10 next page or two to refresh your recollection.

11 A. I'm just looking at the title. I  
12 don't really -- again, as I discussed before, I  
13 don't have any records or documents or emails  
14 or appointments or anything that I was able to  
15 use prior to -- prior to this deposition, so  
16 I'm doing the best I can.

17 Q. Okay. You don't need to apologize.  
18 I'm just asking you if you are familiar with  
19 the document called Operating Results that was  
20 prepared on a monthly basis at Highland?

21 MS. DEITSCH-PEREZ: Object to the  
22 form.

23 Q. If you're not, you're not.

24 A. I don't believe this was prepared on  
25 a monthly basis.

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2 Q. Okay. Do you see that this one  
3 is -- is dated February 2018?

4 A. Yes.

5 Q. Do you have -- do you believe --  
6 have you ever seen a document that was  
7 purporting to report operating results for  
8 Highland?

9 MS. DANDENEAU: Objection to form.

10 A. Yes.

11 Q. Okay. And when you say that you  
12 don't believe it was produced on a monthly  
13 basis, was it produced on any periodic bases to  
14 the best of your recollection?

15 A. I believe it was -- it was prepared  
16 on an annual basis.

17 Q. Okay.

18 MR. MORRIS: Can we look at the next  
19 page.

20 Q. Do you see that there is a statement  
21 here called: Significant items impacting  
22 HCMLP's balance sheet?

23 And it is dated February 2018.

24 A. Yes.

25 Q. Do you recall that there was a

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2 report that Highland prepared that identified  
3 significant items impacting the balance sheet?

4 A. A report that was prepared.

5 Q. Let me ask a better question: Did  
6 Highland prepare reports to the best of your  
7 recollection that identified significant items  
8 that impacted its balance sheet?

9 A. Well, so Highland prepared a -- a  
10 monthly close package. And maybe I'm  
11 getting -- and -- and maybe change names at one  
12 time or maybe I'm just -- again, just  
13 misremembering -- but in that, yes, there is a  
14 page that would detail just changes in -- you  
15 know, just changes month over month on the  
16 balance sheet.

17 Q. Okay. And maybe it is my fault.  
18 Maybe I didn't know the proper name for it.  
19 But let's use the phrase "monthly close  
20 package."

21 Did Highland prepare a monthly close  
22 package in the ordinary course of business  
23 during the time that you served as CFO?

24 MS. DANDENEAU: Objection to form.

25 A. Yes.

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2 Q. And did the monthly close package  
3 that Highland prepared include information  
4 concerning significant items that impacted  
5 Highland's balance sheet?

6 A. Yes, it had a page like that is --  
7 that is on the screen that detailed items  
8 like -- of that nature.

9 Q. And do you know who -- was there  
10 anybody at Highland who was responsible for  
11 overseeing the preparation of the monthly  
12 reporting package?

13 A. That would have been -- again, it  
14 varies over time during my tenure as CFO.  
15 It -- it varied over -- over time, but -- but  
16 typically a -- a corporate accounting manager.

17 Q. And who were the corporate  
18 accounting managers during your tenure as CFO?

19 A. It would have been Dave Klos and  
20 Kristin Hendrix.

21 Q. And did the corporate accounting  
22 manager deliver to you drafts of the monthly  
23 close package before it was finalized?

24 A. Sometimes.

25 Q. Was that the practice even if there

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2 were exceptions to the practice?

3 A. The practice meaning that they  
4 sometimes lured them to me?

5 Q. That that was the expectation even  
6 if circumstances prevented that from happening  
7 from time to time.

8 MS. DEITSCH-PEREZ: Object to the  
9 form.

10 A. I -- I would say it started out that  
11 way but over the years it -- it was not  
12 enforced.

13 Q. Okay. So you were -- you reviewed  
14 and approved monthly -- monthly reporting  
15 packages for a certain period of time and then  
16 over time you stopped doing that.

17 Do I have that right?

18 MS. DANDENEAU: Objection to form.

19 A. Yes, I mean, if you're talking about  
20 a formal meeting where we sit down and go  
21 through and approve it. I would say that was  
22 standard practice a decade -- you know, early  
23 on. And as time went on that -- that -- that  
24 practice wasn't followed.

25 Q. Okay.

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2 A. And, quite frankly, I don't even  
3 know if these were -- these were sent to me  
4 even in any capacity.

5 Q. What was the purpose of preparing  
6 the monthly reporting package -- withdrawn.

7 What was the purpose of preparing  
8 the monthly close package?

9 MS. DEITSCH-PEREZ: Object to the  
10 form.

11 A. The -- the original purpose was so  
12 that it would just -- it would be a report that  
13 was reviewed monthly with senior management.

14 Q. Who was included in the idea of  
15 senior management?

16 A. You know, I think originally when  
17 this was conceived that would have been like  
18 Jim Dondero and Mark Okada.

19 Q. Were monthly reporting -- withdrawn.

20 Were monthly close packages prepared  
21 to the best of your knowledge until the time  
22 you left Highland?

23 A. To my knowledge -- I don't know,  
24 actually. I mean, to my knowledge, I believe  
25 it was being -- that was still being done. I



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2 don't know because, again, I wasn't reviewing  
3 them. I hadn't reviewed a close package for --  
4 for a long time. But I believe the standard  
5 practice that was still being carried out.

6 Q. Did you ever have any discussions  
7 with the debtor's independent board concerning  
8 any promissory notes that were issued by any of  
9 the affiliates or Mr. Dondero?

10 A. I can't -- I can't -- I can't recall  
11 specifically.

12 Q. Did you speak with the independent  
13 board from time to time?

14 A. Yes, from -- from -- from time to  
15 time I had discussions with the independent  
16 board members, you know, either -- either, you  
17 know, by themselves or wholly, you know, as --  
18 as a -- as a combined work.

19 Q. Okay. Before we talk about  
20 Mr. Seery, do you recall ever having a  
21 conversation with Mr. Nelms or Mr. Dubel  
22 concerning any promissory note that was  
23 rendered by one of the affiliates or  
24 Mr. Dondero to Highland?

25 A. I don't recall any conversations

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2 specifically.

3 Q. Do you know if the topic was ever  
4 discussed, even if you don't remember it  
5 specifically?

6 MS. DANDENEAU: Objection to form.

7 A. It -- it -- it may have. I don't  
8 know. I don't recall.

9 Q. Do you recall ever discussing any  
10 promissory note issued by any of the affiliates  
11 or Mr. Dondero with James Seery?

12 A. I don't -- I don't recall  
13 specifically.

14 Q. Do you recall generally ever  
15 discussing the topic of promissory notes issued  
16 by any of the affiliates or Mr. Dondero to  
17 Highland with Mr. Seery?

18 A. Nothing -- nothing is really jumping  
19 out at me.

20 Q. Do you recall if you ever told  
21 Mr. Seery that any of the affiliates or  
22 Mr. Dondero didn't have an obligation to pay  
23 all amounts due and owing under their notes?

24 A. I don't recall having that  
25 conversation.

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2 Q. Did you ever tell Mr. Seery that you  
3 had any reason to believe that the amounts  
4 reflected in the notes issued by the affiliates  
5 and Mr. Dondero were invalid for any reason?

6 A. I don't -- I don't recall.

7 Q. Did you tell Mr. Dondero -- did you  
8 tell Mr. Seery that you thought the promissory  
9 notes issued by the advisors and Mr. Dondero  
10 that were outstanding as of the petition date  
11 were assets of the estate?

12 A. I don't recall having a specific  
13 conversation about those -- you know, those  
14 notes outstanding as -- as of the petition date  
15 being assets on the estate. I mean, we put  
16 together -- you know, they're in the books and  
17 records of the financial statements. I don't  
18 recall having a specific conversation.

19 Q. Did you ever prepare any documents  
20 that were delivered to Mr. Seery that concerned  
21 the promissory notes issued by any of the  
22 affiliates or Mr. Dondero?

23 MS. DANDENEAU: Objection to form.

24 A. Did I produce any that concerned --  
25 you mean did I just -- did I give Mr. Seery

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2 anything that -- that said I have concerns over  
3 these notes?

4 Q. No. Let me try again. Maybe it was  
5 my question.

6 Did you ever give Mr. Seery any  
7 information concerning any of the notes that  
8 were issued by any of the affiliates or  
9 Mr. Dondero?

10 MS. DANDENEAU: Objection to form.

11 A. I don't recall if I did or not. I  
12 don't -- I don't remember. I mean, you have my  
13 emails. You may have asked. Again, I don't --  
14 I don't know.

15 MR. MORRIS: Can we put up the  
16 document that has been premarked as Exhibit  
17 39?

18 MS. DANDENEAU: John, that is this  
19 document, isn't it?

20 MR. MORRIS: Oh, yeah, it might be,  
21 as a matter of fact. Let's go to Number  
22 40.

23 (Exhibit 40 marked.)

24 Q. During the bankruptcy,  
25 Mr. Waterhouse, did you prepare documents that

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2 were filed with the bankruptcy court?

3 A. I didn't -- I didn't prepare them  
4 personally.

5 Q. Did people prepare them under your  
6 direction?

7 A. Yes. There were members of the team  
8 that prepared them, and they worked in -- you  
9 know, there were members of DSI that were  
10 involved in the process as well.

11 Q. To the best of your knowledge, did  
12 DSI rely on the employees of Highland for the  
13 information that they used to prepare the  
14 bankruptcy filings?

15 A. Yes. The books and records were  
16 with the Highland personnel.

17 Q. Okay. And do you see on the screen  
18 here, there is a document that we have marked  
19 as Exhibit 40 that is -- that is titled Summary  
20 of Assets and Liabilities?

21 A. Uh-huh.

22 Q. Okay. And do you recall reviewing  
23 any summary of assets and liabilities before it  
24 was filed with the bankruptcy court?

25 A. Yes, I recall reviewing this at a

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2 high level.

3 Q. And did you believe that it was  
4 accurate at the time it was filed?

5 A. I didn't have any other reason to  
6 believe otherwise.

7 Q. Okay. Do you see that the total  
8 value of all properties listed in Part 1 is  
9 approximately \$410 million?

10 MS. DEITSCH-PEREZ: Objection to  
11 form.

12 A. Yes, it is in 1c.

13 Q. Yes.

14 A. Yes, I see that.

15 Q. Okay. If we go to the second page,  
16 now I think I may just have excerpts here, just  
17 so everybody is clear, but if we scroll down to  
18 the second page, you will see that there is  
19 a -- a little further. There you go. You will  
20 see there is a reference to Item 71, notes  
21 receivable.

22 Do you see that?

23 A. I do.

24 Q. And that was a reference to the  
25 notes receivable from the affiliates and

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2 Mr. Dondero, among others; is that right?

3 MS. DANDENEAU: Objection to form.

4 A. Yes. The affiliate notes and the  
5 Dondero notes were in this amount, but they  
6 weren't -- again, like you said, and among  
7 others.

8 Q. Okay. We will look at the  
9 specificity because I'm not playing gaming  
10 here, but do you know if the \$150 million of  
11 notes receivable was included within the  
12 \$410 million of total value of the debtor's  
13 assets?

14 MS. DANDENEAU: Objection to form.

15 A. I -- I -- I believe so.

16 Q. Right. And so is it fair to say  
17 that as of the date this document was prepared,  
18 the notes receivable were more than one-third  
19 of the value of the debtor's assets?

20 MS. DEITSCH-PEREZ: Object to the  
21 form.

22 MS. DANDENEAU: Object to the form.

23 A. Again, if you are just taking the  
24 math, 150 divided by whatever the \$400 million  
25 number is above, then yes, you get there.

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2 Q. Okay.

3 A. You know, but as of the time of this  
4 filing, that is what was put in this filing,  
5 right, but, you know, I mean, numbers --  
6 numbers change, facts and circumstances change.

7 Q. But as the CFO of Highland, the  
8 debtor in bankruptcy, did you believe that this  
9 number accurately reflected the total amount  
10 due under the notes receivable?

11 A. That is what we had in our books and  
12 records.

13 Q. Okay. And did you believe as the  
14 CFO that the books and records accurately  
15 reported the then value of the debtor's assets?

16 MS. DANDENEAU: Objection to form.

17 A. We didn't -- as part of this filing,  
18 there was no fair value measurement or  
19 anything. These were just accounting entries  
20 for the promissory notes. There is no analysis  
21 for impairment or fair market value adjustments  
22 or anything of that nature. This is purely  
23 taking numbers and putting them in our form.

24 Q. Did you do any impairment analysis  
25 at any time while you were employed by



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2 Highland?

3 A. Yes, we did do impairment analysis  
4 on -- on assets.

5 Q. Okay. Did you ever do an impairment  
6 analysis on any of the promissory notes that  
7 were given to Highland by any of the affiliates  
8 or Mr. Dondero?

9 A. Not that I recall.

10 Q. Under what circumstances do you  
11 prepare impairment analyses?

12 A. As -- as -- if you're preparing  
13 financials in accordance with GAAP, generally  
14 accepted accounting principles, if you're  
15 preparing full GAAP financials, you should be  
16 preparing -- you should be undergoing on a  
17 periodic basis any fair market value  
18 adjustments to assets.

19 As I was instructed at the time of  
20 the petition date, we weren't producing GAAP  
21 financials. So this wasn't something I was  
22 worried about nor concerned about.

23 Q. Okay. Were NexPoint and HCMFA and  
24 Highland's audited financial statements  
25 prepared in accordance with GAAP?

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2 A. The audited financials -- yes,  
3 audited financial statements are prepared in  
4 accordance with GAAP.

5 Q. Do you recall whether any of  
6 Highland or HCMFA or NexPoint ever made a fair  
7 market value adjustment to any of the notes  
8 issued by any of the affiliates or Mr. Dondero  
9 to Highland?

10 A. I do not recall that happening, but  
11 the -- it is because under -- under GAAP,  
12 the -- the treatment of liabilities is  
13 different than assets.

14 Q. Okay. So then let's just focus on  
15 Highland's audited financial statements.

16 The last audited financial  
17 statements were for the period ending December  
18 31st, 2018; correct?

19 A. That is my understanding.

20 Q. And you had -- you had an obligation  
21 to disclose anything to PricewaterhouseCoopers  
22 concerning any subsequent events between the  
23 end of 2018 and June 3rd, 2019; correct?

24 MS. DANDENEAU: Objection to form.

25 MS. DEITSCH-PEREZ: Form.

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2 A. Correct.

3 Q. Okay. To the best of your  
4 knowledge, as Highland's CFO, did Highland ever  
5 make any fair market value adjustments to any  
6 of the promissory notes that were carried on  
7 its balance sheet and that were issued by any  
8 of the affiliates or Mr. Dondero?

9 A. I think I answered that question  
10 earlier. I don't recall doing that for any of  
11 the -- those -- those notes. So it would have  
12 included the audit for the -- for the 2018  
13 period.

14 Q. Okay.

15 MR. MORRIS: Can we go to the next  
16 page.

17 Q. Do you see this is a note a list of  
18 notes receivable? Do you see that?

19 A. Yes, I do.

20 Q. And do you see that this ties into  
21 the page that we were just looking?

22 A. I'm sorry, can we go back to the  
23 prior page? I mean, it was at 150,331,222. It  
24 was on the prior page. Next page. Yes, it  
25 agrees.

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2 Q. Okay. So now let's look at that  
3 schedule. So this was the face amount of all  
4 of the promissory notes that Highland held at  
5 the time this document was filed with the  
6 bankruptcy court; right?

7 A. Yes.

8 Q. There is a footnote there that says,  
9 doubtful or uncollectible accounts are  
10 evaluated at year-end.

11 Do you see that?

12 A. I do.

13 Q. Okay. And is it fair to say that as  
14 of the year-end 2018, the year before this,  
15 that to the extent any of these notes were  
16 outstanding at that time, they weren't deemed  
17 to be doubtful or uncollectible?

18 A. Yeah. For the 2018 audit, there  
19 weren't any -- there weren't any adjustments to  
20 fair value.

21 Q. Okay. And during the bankruptcy, do  
22 you recall that Highland subsequently reserved  
23 for the Hunter Mountain Investment Trust note?

24 A. Yes.

25 Q. Why did Highland -- were you

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2 involved in the decision to reserve the Hunter  
3 Mountain Investment Trust note?

4 A. I was not.

5 Q. Do you know why Highland decided to  
6 reserve for the Hunter Mountain Investment  
7 Trust note?

8 A. I don't know yet decision was made.  
9 I believe it was made by someone at DSI.

10 Q. Okay. I'm just asking if you know  
11 why.

12 Did you ever ask anyone why they  
13 reserved for that particular note?

14 A. I don't recall.

15 Q. Do you know whether the debtor  
16 reserved for any other note on this list during  
17 the bankruptcy?

18 A. Again, I don't recall. I wasn't  
19 part of any process of -- again, like any fair  
20 value adjustments or anything to that degree.  
21 Like I said, a lot of that was done by DSI and  
22 it was kind of out of our court.

23 Q. Okay. Do you know if any note  
24 receivable on this list was ever deemed by the  
25 debtor to be doubtful or uncollectible?

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2 A. I don't -- I don't have a  
3 recollection of every filing, so I don't know.

4 Q. Did you ever have a discussion with  
5 anybody at any time about whether any of the  
6 notes receivable on this list should be deemed  
7 to be doubtful or uncollectible?

8 A. No. As I previously stated, we were  
9 told we didn't have to keep GAAP financials.  
10 We weren't having -- you know, there is no  
11 underlying audits being performed, so I mean,  
12 it wasn't something I worried about.

13 MR. MORRIS: I move to strike.

14 Q. Did you ever have a conversation  
15 with anybody about any of the notes receivable  
16 and whether they should be deemed to be  
17 doubtful or uncollectible? Did you have the  
18 conversation, yes or no?

19 MS. DANDENEAU: Objection to form.

20 A. I don't recall.

21 Q. Do you recall ever telling anybody  
22 that you believed any of the notes receivable  
23 on this list should be doubtful -- should be  
24 deemed to be doubtful or uncollectible?

25 MS. DANDENEAU: Objection to form.

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2 A. I don't recall. I mean, it may have  
3 happened, you know, again, when we initially  
4 getting DSI up to speed and going through  
5 financials, it may have happened, but I don't  
6 recall specifically.

7 Q. While you were the CFO of Highland  
8 during the time that the company was in  
9 bankruptcy, did you have any reason to believe  
10 that any of the notes receivable on this list  
11 other than Hunter Mountain Investment Trust  
12 should have been characterized as doubtful or  
13 uncollectible?

14 MS. DANDENEAU: Objection to form.

15 MS. DEITSCH-PEREZ: Form.

16 A. I didn't know. I didn't form an  
17 opinion. Bankruptcy was new to me. It still  
18 is new to me, even after going through this.  
19 So I really didn't know what to expect nor  
20 really -- you know, I didn't know.

21 MR. MORRIS: I move to strike.

22 Q. During the period of Highland's  
23 bankruptcy when you were serving as CFO, did  
24 you have any reason to believe any of the notes  
25 on this list were doubtful or uncollectible?

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2 MS. DEITSCH-PEREZ: This is like the  
3 fifth time you've asked it. Object to the  
4 form.

5 MR. MORRIS: I'm moving to strike,  
6 if you haven't noticed, because he's not  
7 answering the question.

8 MS. DEITSCH-PEREZ: He was answering  
9 the question, you just didn't like it, like  
10 the answer.

11 MR. MORRIS: Good Lord.

12 Q. Go ahead, Mr. Waterhouse.

13 A. Again, I don't -- we brought up a  
14 myriad of issues at the start of the bankruptcy  
15 case. I don't recall if this was one of them,  
16 but, again, there are a lot of things we  
17 couldn't change. Even, you know, I was told  
18 status quo, blah, blah, blah, right, there is a  
19 stay, you can't -- you know, I don't recall  
20 specifically, but that doesn't mean it didn't  
21 happen.

22 MR. MORRIS: I move to strike.

23 Q. During the time that Highland was in  
24 bankruptcy and you served as CFO, did you have  
25 any reason to believe that any of the notes



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2 receivable on this list were doubtful or  
3 uncollectible?

4 MS. DEITSCH-PEREZ: Object to the  
5 form.

6 A. Potentially.

7 Q. Did you ever tell anybody that?

8 A. As I just stated like five times,  
9 yes, we -- at the beginning after filing and we  
10 were getting DSI and others up to speed, you  
11 know, we had a myriad of discussions of a lot  
12 of things and this was likely one of them. I  
13 don't -- but I don't recall specifically we  
14 talked --

15 Q. I don't want to know -- I don't want  
16 to know what was --

17 MS. DEITSCH-PEREZ: Wait, wait.

18 Excuse me. Mr. Morris, you did not let him  
19 finish his answer.

20 A. I spoke -- we had -- we were  
21 bringing Fred Karesa and Brad Sharp (phonetic)  
22 up to speed on all of these items, contracts,  
23 and investments and going through -- we had  
24 hours and hours and hours of discussion. And  
25 then not only do I have to repeat this not

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2 once, twice, three, four times with -- you  
3 know, I mean, we -- I don't -- I don't remember  
4 the sum culmination of all these discussions.  
5 They all kind of blend together.

6 MR. MORRIS: Okay. I move to strike  
7 and I will try one more time.

8 Q. Did you ever tell anybody at DSI  
9 that you believed any of the notes receivable  
10 on this list were doubtful or uncollectible?

11 MS. DANDENEAU: Object to form.

12 A. Potentially.

13 Q. Potentially you told them or  
14 potentially they were doubtful or  
15 uncollectible?

16 A. Potentially I told them that we  
17 needed to look at the value of these -- of  
18 these assets.

19 Q. Okay. Did you -- okay. It is  
20 potential that you told them and it is  
21 potentially that you didn't; right?

22 MS. DANDENEAU: Objection to form.

23 A. I've gone through that. I don't  
24 recall specifically.

25 Q. So you should just -- I don't want

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2 to tell what you to do. Do you have --

3 MS. DANDENEAU: Good.

4 Q. Other than -- other than telling  
5 them that they should look at the values, do  
6 you have any recollection whatsoever of ever  
7 having told anybody at DSI that any of the  
8 notes receivable on this page were doubtful or  
9 uncollectible?

10 MS. DEITSCH-PEREZ: Object to the  
11 form.

12 MS. DANDENEAU: Objection.

13 A. I recall having general discussions  
14 about everything on our balance sheet which  
15 would have included these -- these notes  
16 receivable.

17 Q. Okay.

18 A. I don't recall specifically where  
19 those discussions delved into.

20 Q. Do you recall any discussion at all  
21 on the topic of whether any of these notes on  
22 this list were doubtful or uncollectible?

23 MR. AIGEN: Mr. Morris, how on earth  
24 is that question different from the  
25 question that you just asked for the last

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2 five times? I mean, really I thought you  
3 were -- (overspeak.)

4 MR. MORRIS: Because he never  
5 answered it.

6 MS. DEITSCH-PEREZ: Are you  
7 listening to him?

8 MR. MORRIS: You know --

9 MS. DEITSCH-PEREZ: He basically  
10 said that he had a conversation with DSI  
11 that went over all of this stuff and that  
12 conversation could have included the notes  
13 but he doesn't recall specifically.

14 What more do you want him -- to ask  
15 of him?

16 MR. MORRIS: I want him -- I would  
17 love him to say -- I would like him to  
18 testify to the truth, and that is he has no  
19 recollection.

20 MS. DEITSCH-PEREZ: Well, the truth  
21 as you would like to see it, but -- but he  
22 is testifying truthfully. And I -- and, by  
23 the way, I move to strike that comment --

24 MR. MORRIS: Okay.

25 MS. DEITSCH-PEREZ: -- because it

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2 suggests that he has not testified  
3 truthfully.

4 MR. MORRIS: I will ask my question  
5 again. And if at any time you want to  
6 direct him not to answer, that is your  
7 prerogative.

8 Q. Mr. Waterhouse, do you have any  
9 recollection at all of ever telling anybody  
10 from DSI that any of these notes were doubtful  
11 or uncollectible?

12 MS. DANDENEAU: Object to form.

13 A. I don't remember specifically.

14 Q. Do you remember generally that  
15 specific topic?

16 A. We generally talked about assets,  
17 values. If -- we had discussions of that and  
18 collectability in nature. I mean, of Highland,  
19 the funds, the CLOs, the entire complex. We  
20 had discussions like that, which is, you know,  
21 as you look at a billion dollar consolidated  
22 balance sheet.

23 So I generally remember -- this is  
24 billions of dollars, including these assets --  
25 having discussions of this -- of this type.

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2 Q. Do you believe that an affiliate  
3 loan on this list was doubtful or  
4 uncollectible? Would you have told that to  
5 DSI?

6 MS. DANDENEAU: Objection to form.

7 MS. DEITSCH-PEREZ: Object to form.

8 A. If we had, like -- again, if we --  
9 if -- if we weren't preparing financial  
10 statements in accordance with GAAP, and -- you  
11 know, if DSI at that point -- they were --  
12 again, I was new to bankruptcy.

13 The CRO is -- we are delegating  
14 everything to the CRO. All the decisionmaking.  
15 Remember -- remember when you and I went into  
16 Delaware Court and we were saying DSI basically  
17 does everything, remember this, Mr. Morris?

18 You were my counsel at the time, and  
19 basically we're running everything through DSI.  
20 That was what this was like in the early part.

21 Everything was communicated through  
22 DSI. So DSI says this. DSI says that. That  
23 is what we're doing, and we're pointing out  
24 things to them.

25 Now, they decide what direction this

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2 goes.

3 Q. Did you point out that any of  
4 these --

5 A. I don't recall specifically.

6 Q. Okay. At any time that you served  
7 as Highland's CFO, did you ever point out to  
8 DSI that any of these loans were doubtful or  
9 uncollectible?

10 MS. DEITSCH-PEREZ: Object to the  
11 form.

12 MS. DANDENEAU: Objection.

13 A. If you're asking me if I had a  
14 conversation with DSI, if any of these loans  
15 were doubtful or uncollectible, I don't recall  
16 specifically.

17 Q. Do you recall that the debtor filed  
18 on the docket monthly operating reports?

19 A. Yes.

20 Q. You prepared those personally,  
21 didn't you?

22 MS. DEITSCH-PEREZ: Objection to  
23 form.

24 A. I didn't personally prepare them,  
25 the team did with DSI.

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2 Q. But you signed them; correct?

3 A. My signature is on the MORs.

4 Q. And you signed them as the preparer  
5 of the document; correct?

6 A. Yes, I did this pursuant to DSI's  
7 instructions.

8 Q. Okay. You wouldn't have signed the  
9 document if you didn't believe it to be  
10 accurate; correct?

11 A. If I had reason to believe it  
12 wasn't, presumably I wouldn't have signed it.

13 Q. Okay. And do you have any reason to  
14 believe right now that any monthly operating  
15 report that has your signature on it was  
16 inaccurate in any way?

17 MS. DEITSCH-PEREZ: Object to the  
18 form.

19 A. My understanding of the monthly  
20 operating reports is we were filing them in  
21 accordance with the standards set by the Court.  
22 It wasn't -- you know, again, I don't -- you  
23 know, it wasn't GAAP. It wasn't these other  
24 standards, so I testified I didn't have  
25 experience in this. The CRO was running the



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2 show. I followed their advice.

3 Q. But you assured yourself that  
4 everything in the report was accurate before  
5 you signed them; correct?

6 MS. DANDENEAU: Objection to form.

7 A. I trusted the guidance from the CRO  
8 and their team and their experience and their  
9 guidance for doing this for many, many, many  
10 years to -- to -- to categorize and put things  
11 in ways on the form.

12 You know, my team had -- had not  
13 filled out these forms before and needed all of  
14 this guidance. I'm not an expert in this. I  
15 have oversight of it. I signed the form. DSI  
16 told me to.

17 Q. And you and your team are the source  
18 of the information that DSI used to create the  
19 reports; correct?

20 MS. DANDENEAU: Objection to form.

21 A. The books and records reside with  
22 the -- with -- with the corporate accounting  
23 team.

24 Q. Okay. And the corporate accounting  
25 team was the corporate accounting team that was

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2 under your direction; correct?

3 A. Yes.

4 Q. So -- so your team was responsible  
5 for maintaining Highland's books and records;  
6 correct?

7 A. I'm sorry, my team was responsible?

8 Q. Correct.

9 A. Yes. They -- they -- they were  
10 the -- the -- the general ledger of Highland,  
11 that responsibility was with the corporate  
12 accounting team.

13 Q. The corporate accounting group  
14 reported to you; correct?

15 A. Yes.

16 MR. MORRIS: Can we put up 41,  
17 please.

18 (Exhibit 41 marked.)

19 Q. All right. You will see that this  
20 is a report that is dated January 31st, 2020,  
21 but it is for the month ending December 2019.

22 Do you see that?

23 A. I do.

24 Q. And you signed this report in your  
25 capacity as the chief financial officer of

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2 Highland; correct?

3 A. Yes.

4 Q. And you're the preparer -- you're  
5 identified as the preparer of the report;  
6 correct?

7 A. That is correct.

8 Q. Do you recall participating in the  
9 preparation of monthly operating reports?

10 A. As I testified earlier, it was put  
11 together, you know, with the team. The team  
12 worked with DSI to put these monthly operating  
13 reports together. We had no experience at this  
14 time of the monthly operating reports or things  
15 of this nature.

16 MR. MORRIS: Can you turn to the  
17 next page, please.

18 Q. Do you see a line item under assets  
19 due from affiliates?

20 A. Yes, I do.

21 Q. Okay. And to the best of your  
22 knowledge and understanding, as the person who  
23 is identified as the preparer of this report,  
24 does that line item include the affiliate loans  
25 that we've been talking about?

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2 A. Again, I would have to see, just  
3 like we did with the financial statements of  
4 Highland and NexPoint, I would have to see a  
5 detailed build, but, you know, if you look at  
6 the other line items, you know, the only other  
7 place it could be would be in -- in other  
8 assets.

9 Q. Okay. And as a matter of  
10 arithmetic, is it fair to say that is the value  
11 of the assets due from affiliates was more than  
12 25 percent of the value of Highland's total  
13 assets as of 12/31/2019?

14 MS. DANDENEAU: Objection to form.

15 A. I'm really not doing the mental math  
16 right now, so I've been going at this depo for  
17 hours, so I'm really not -- you know --

18 Q. All right. No problem.

19 A. -- these are millions of dollars.

20 Q. Let's look at the Footnote 1,  
21 please. Do you see there is a reference to the  
22 Hunter Mountain note?

23 A. Yes, I see that in Footnote 1.

24 Q. Okay. And that's the reserve that  
25 was taken against that note?

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2 A. Yes, that is what this indicates.

3 Q. Okay. And were you aware that the  
4 reserve was being taken on that it was?

5 A. I was -- I was aware, yeah, at some  
6 point, yes.

7 Q. Okay. And are you aware of any  
8 reserve being taken with respect to any other  
9 note that was issued in favor of Highland?

10 A. Again, as I testified, we didn't go  
11 through an analysis on -- on -- on the other  
12 notes.

13 Q. Can we turn --

14 A. I believe -- I believe it says that  
15 in Footnote 1, fair value has not been  
16 determined with respect to any of the notes.

17 So this footnote -- footnotes, look,  
18 there has been no determination.

19 Q. Okay. The determination was made in  
20 the audited financial statements just six  
21 months earlier; right? We saw that earlier?

22 A. That was as of 12/31/18. I mean,  
23 things -- circumstances -- there's a bank --  
24 circumstances change, things change -- things  
25 change over time, you know, facts and

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2 circumstances change. Again, you have to do an  
3 analysis.

4 Q. Okay. And you do recall that in  
5 Highland's 2018 financial statement, all of the  
6 notes issued by affiliates and Mr. Dondero that  
7 were due at year-end had a fair value equal to  
8 the carrying value; correct? We looked at  
9 that?

10 A. Yes. That was in the -- in the  
11 disclosure for the -- for the affiliate notes,  
12 yes.

13 Q. And -- and you were obligated to  
14 share with PwC any subsequent events between  
15 the end of 2018 and the date that you signed  
16 your management representation letter on June  
17 3rd, 2019; correct?

18 MS. DEITSCH-PEREZ: Object to the  
19 form.

20 A. Yes. I -- I -- I signed the  
21 management, you know, my signature is in the  
22 management representation letter -- I hope I'm  
23 answering your question -- that is dated in  
24 June with the representations made in that  
25 management representation letter.

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2 Q. Okay. And there was nothing that  
3 caused PricewaterhouseCoopers to include in  
4 subsequent events any adjustment to the  
5 conclusion that the fair value of the affiliate  
6 notes and the notes issued by Mr. Dondero  
7 equaled the carrying value; correct?

8 MS. DANDENEAU: Objection to the  
9 form.

10 A. That is correct. That is what was  
11 in the -- in the -- in the footnotes.

12 Q. Okay. So are you aware of anything  
13 that occurred between June 3rd, 2019 and  
14 December 31st, 2019 that would have caused the  
15 fair value of the notes to differ from the  
16 carrying value?

17 A. Yeah. Highland filed for  
18 bankruptcy, things changed -- I mean, there was  
19 a bankruptcy filed in October of -- of -- of  
20 2019, right, the petition date that we've  
21 described earlier.

22 I mean, I had a -- I guess looking  
23 back naively, I thought we were going to get an  
24 audit from PwC for year-ended 2019, and when we  
25 had discussions with PwC, they were like, are

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2 you crazy, we're not auditing this. Values  
3 change, all these things change, bankruptcy  
4 changes the entire scenario. I mean -- and  
5 they're like, we're not -- we're not touching  
6 this.

7 And so, you know, I was like, okay,  
8 sorry, I get it, okay, no an audit.

9 I mean, it is -- you know, and --  
10 you know, and we weren't preparing GAAP  
11 financial statements.

12 Again, I didn't know what we were  
13 doing in relation to our financial statements,  
14 but these were the discussions I was having at  
15 the time. And yeah, I mean, filing bankruptcy  
16 from what I got from outside auditors and  
17 others involved changed things dramatically.

18 Q. Okay. Highland wasn't the obligor  
19 under any of the notes that we're talking  
20 about; correct?

21 A. No.

22 Q. So --

23 A. That's right.

24 Q. So can you identify any fact that  
25 would cause the fair value to deviate from the



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2 carrying value during the seven-month period  
3 between June 3rd and the end of the year, 2019?

4 MS. DANDENEAU: Objection to form.

5 A. No. I mean, I'm putting myself back  
6 at that time, right. Hindsight is 2020, but we  
7 didn't do an analysis, but we would have done a  
8 fulsome analysis and looked at all of the facts  
9 and circumstances at the time, but asset values  
10 change. You know, there could have been a  
11 market crash in hindsight in 2020, which --  
12 which affected entities' abilities.

13 There could have been all of these  
14 things, right, that -- that happen. It is --  
15 it is easy to look back in hindsight, but when  
16 you are looking at this in -- in realtime, the  
17 analysis is different, and again, we didn't do  
18 an analysis.

19 Q. Okay. You didn't do an analysis.

20 Do I have that right?

21 A. I don't -- I don't recall doing one  
22 or maybe -- you know, I don't recall doing one.

23 MR. MORRIS: Okay. I'm going to

24 take a break. I may be done, so the time  
25 now is -- is 4:30 your time. Let's just

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2 take a short break until 4:40 your time.

3 MS. DANDENEAU: Okay.

4 VIDEOGRAPHER: We're going off the  
5 record, 4:31 p.m.

6 (Recess taken 4:31 p.m. to 4:43 p.m.)

7 VIDEOGRAPHER: We are back on the  
8 record at 4:43 p.m.

9 MR. MORRIS: I have no further  
10 questions.

11 MR. RUKAVINA: Okay.

12 Mr. Waterhouse, I will go next.

13 EXAMINATION

14 BY MR. RUKAVINA:

15 Q. Sir, my name is Davor Rukavina. I'm  
16 the lawyer for --

17 MR. MORRIS: Hey, Davor, just before  
18 you begin, I just want to put on the record  
19 Highland's objection to documents that were  
20 produced to me 10 minutes before the  
21 deposition began.

22 MR. RUKAVINA: What the basis of  
23 your objection?

24 MR. MORRIS: That they were due  
25 quite some time ago, and the fact that you

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2 had -- I just think it's appropriate to --  
3 to dump documents on somebody 10 minutes  
4 before the deposition. I just think  
5 that's --

6 MR. RUKAVINA: Well, these are  
7 documents Highland produced. I'm not aware  
8 of any rule I have to give you advance  
9 documents when I know for the record that  
10 other than the exhibits that you sent to us  
11 last week, most of the exhibits you used  
12 today you did not provide to me prior to  
13 this deposition.

14 MR. MORRIS: No, but the documents  
15 were produced by me in -- in litigation,  
16 right?

17 MR. RUKAVINA: I'm going to use  
18 primarily, John, the documents that you  
19 produced to me today, but you may.

20 MR. MORRIS: Primarily. I've got --  
21 I've got my objection. You have got your  
22 response. Proceed.

23 Q. Mr. Waterhouse, again, I represent  
24 the advisors, HCMFA and NexPoint Advisors.

25 Do you understand that?

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2 A. Yes.

3 Q. You and I have never met or talked  
4 before today, have we?

5 A. No, I have -- I have heard your  
6 voice on calls before.

7 Q. Okay.

8 MR. RUKAVINA: Madam Court Reporter,  
9 I will use a few exhibits today. My  
10 associate, Mr. Nguyen, will find some way  
11 to get them to you. I don't know how to do  
12 that, but it looks like you guys do.

13 I am going to use numbers as well.  
14 But to differentiate them from Mr. Morris  
15 we're going to mark mine with the prefix A  
16 for advisors.

17 Do you understand?

18 COURT REPORTER: Yes.

19 MR. RUKAVINA: Okay. Perfect.

20 Q. Okay. So, Mr. Waterhouse, let's  
21 start with those two HCMFA notes that you were  
22 asked about, one for 5 million and one for  
23 2.4 million.

24 Do you recall those notes?

25 A. Yes.

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2 Q. Were you ever the CFO of HCMFA?

3 A. I don't recall.

4 Q. So to the best of your recollection,  
5 you were still an officer of HCMFA in 2019,  
6 just that your title was treasurer?

7 MR. MORRIS: Object to the form of  
8 the question. There is no leading here.  
9 He works for your client.

10 MS. DANDENEAU: That is not -- that  
11 is not true.

12 MR. MORRIS: He's the treasurer --  
13 he is the treasurer of your client. I  
14 don't -- I'm going to object every time you  
15 try to lead, so...

16 MR. RUKAVINA: Totally fine to  
17 object.

18 MR. MORRIS: Okay.

19 Q. Please answer my question,  
20 Mr. Waterhouse.

21 A. I'm sorry, could you repeat? There  
22 was...

23 Q. Yes. You were -- you testified  
24 earlier that in 2019 you were an officer of  
25 HCMFA; correct?

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2 A. Yes, I testified that I was the  
3 treasurer and I didn't know if that incumbency  
4 certificate, you know, was one that appointed  
5 me as a treasurer, but yes.

6 Q. I'm just trying to confirm that  
7 sitting here today, to the best of your  
8 recollection, at that time you were -- your  
9 title was treasurer. It was not chief  
10 financial officer.

11 A. I don't recall that being my title.

12 Q. Okay. And in May of 2019, however,  
13 I think you testified you were the chief  
14 financial officer of the debtor; correct?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. Yes, I was -- yes.

18 Q. Okay. As such, in May of 2019, did  
19 you have the authority, to your understanding,  
20 to unilaterally loan \$5 million or \$2.4 million  
21 to anyone on behalf of the debtor?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Sorry, can you repeat that?

25 Q. Yes. So in your capacity as the

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2 chief financial officer of the debtor, Highland  
3 Capital Management, L.P., in May of 2019, did  
4 you believe that you unilaterally, just Frank  
5 Waterhouse, had the authority to loan on behalf  
6 of the debtor to anyone \$5 million and  
7 \$2.4 million?

8 MR. MORRIS: Objection to the form  
9 of the question.

10 A. No.

11 Q. Is it because loans of that amount  
12 would have had to be approved by someone else?

13 A. Yes.

14 Q. Who in '20 -- in May of 2019, if  
15 Highland wanted to loan 5 million or  
16 \$2.4 million to someone, what would have been  
17 the internal approval procedure?

18 MR. MORRIS: Objection to the form  
19 of the question.

20 A. If -- if we had loans of that nature  
21 that needed to be made due to their size, we  
22 would have gotten approval from the -- the  
23 president of Highland.

24 Q. And who that was individual?

25 A. It was James Dondero.

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2 Q. Okay. Now, I'm going to ask you a  
3 similar question but for a different entity.

4 In May of 2019, as the treasurer of  
5 HCMFA, did you believe that you unilaterally  
6 had the ability to cause HCMFA to become the  
7 borrower of a \$5 million loan and a  
8 \$2.4 million loan?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. No.

12 Q. What would -- what would the  
13 approval have taken place -- strike that.

14 What would the approval process have  
15 been like in May of 2019 at HCMFA for HCMFA to  
16 take out a \$7.4 million loan?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. The process would have been similar  
20 to what we just discussed on -- for Highland to  
21 make a loan to others. So, again, you know,  
22 we -- we would have -- either myself or someone  
23 on the team would have discussed this with  
24 the -- the president and owner of -- of HCMFA.

25 Q. And who was that individual?



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2 A. That was James -- Jim Dondero.

3 Q. So do I understand that in May of  
4 2019, on behalf of both the lender, Highland,  
5 and the borrower, HCMFA, Mr. Dondero would have  
6 had to approve \$7.4 million in loans?

7 MR. MORRIS: Objection to the form  
8 of the question.

9 A. Yes.

10 Q. You mentioned when Mr. Morris was  
11 asking you the NAV error, N-A-V error, with  
12 respect to TerreStar, without writing us a  
13 novel, unless you feel like you have to, can  
14 you summarize what that NAV error was? What  
15 happened?

16 A. There was a -- in the Highland  
17 Global Allocation Fund, it owned at the time an  
18 equity interest in a company called TerreStar.  
19 And TerreStar is -- at the time was a private  
20 company, and it may still be today. Again, I'm  
21 putting myself back then as a private company.

22 We had -- sorry, I don't mean we --  
23 the fund and the advisor used Houlihan Lokey  
24 to -- to value that investment. And during  
25 that time there was some trades that were

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2 executed at market levels that were much lower  
3 than the Houlihan Lokey model.

4 And based on information and  
5 discussions with the portfolio managers and,  
6 you know, principals that were very familiar  
7 with TerreStar, it was determined that those  
8 trades were non-orderly and they were not  
9 considered in the valuation as consulted with  
10 Houlihan Lokey and PricewaterhouseCoopers at  
11 the time.

12 Subsequent to a -- I can't remember  
13 the exact circumstances of why the SEC got  
14 involved. I think it was due to this -- this  
15 investment became a material position in the  
16 fund. It triggered an SEC, kind of, inquiry.  
17 And as part of that inquiry, they questioned  
18 the valuation methodology. "They" meaning the  
19 SEC.

20 And at the culmination of that  
21 process -- this is all summarized -- the value  
22 that was -- that ultimately had to be used in  
23 the fund's NAV was different than -- materially  
24 different than what the original valuation at  
25 Houlihan Lokey provided.

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2 And given that there was this fund  
3 was, as we discussed -- I don't know if we  
4 discussed it, but it was an open-ended fund  
5 that was going -- that was converting to a  
6 close-end fund.

7 Due to the fact that it was an  
8 open-ended fund, you had to recalculate NAV and  
9 see what the impact was on people -- on  
10 investors coming in and out of the fund and if  
11 there is a detrimental impact and to calculate  
12 what that -- what that impact was and if there  
13 was any amounts owed to the fund pursuant to  
14 the error.

15 Q. Were you personally involved  
16 internally at either Highland or HCMFA with  
17 these investigations and discussions with the  
18 SEC?

19 A. I was.

20 Q. Which other key people or senior  
21 people at Highland were involved, to your  
22 recollection?

23 A. Myself, Thomas Surgent, David Klos,  
24 Lauren Thedford, Jason Post.

25 Q. Mr. Dondero, was he --

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2 A. I believe Cliff Stoops. I'm trying  
3 to think. And maybe that is -- that is -- that  
4 is -- that is all kind I can recall at the  
5 moment.

6 Q. Do you recall whether it was  
7 determined that the fund suffered losses as a  
8 result of this error?

9 A. The -- the fund -- the -- the --  
10 because the open-ended nature of the fund,  
11 there were losses that were attributable to  
12 investors. Meaning they -- they would have  
13 redeemed and got a less money or -- or they  
14 subscribed in and maybe because they didn't get  
15 enough shares and then they later sold and then  
16 they were harmed in that fashion.

17 And there is -- there is -- there  
18 were very -- there were very detailed  
19 calculations and, you know, all these different  
20 scenarios that we had to -- I'm sorry, I keep  
21 saying "we" -- that the individuals involved  
22 had to calculate and quantify.

23 Q. Well, do you recall whether HCMFA  
24 admitted certain fault and liability for this  
25 error?

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2 A. I don't recall specifically.

3 Q. Do you recall whether HCMFA caused  
4 any funds to be paid to the investors and the  
5 fund the subject of the NAV error?

6 A. Yes.

7 Q. Do you recall the approximate amount  
8 of funds, moneys paid to the investors and the  
9 fund?

10 A. It was -- it was approximately  
11 \$7 million.

12 Q. If I was to suggest 7.8 million,  
13 would that ring more true or are you sticking  
14 with your original answer?

15 A. It was -- it was approximately 7 --  
16 7 to \$8 million. Again, I don't remember the  
17 exact number, but it was in that ballpark.

18 Q. So regardless of whether HCMFA  
19 accepted fault or liability, it caused some  
20 \$7 million or more to be paid out to affected  
21 investors in the fund?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. And I want to make sure I'm  
25 understanding your question because there is a

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2 lot of different entities that are going on to  
3 my head.

4 I think what you are saying is based  
5 on this error, shareholders were harmed by this  
6 approximately \$7.8 million -- by approximately  
7 \$7.8 million. Is that what you are asking?

8 Q. Yes, sir.

9 A. Yes, that was -- again, I don't have  
10 the exact numbers. If I take -- it was -- it  
11 was in that ballpark, and there is a detail  
12 calculation and write-up that could, that --  
13 that exists someplace.

14 Q. Now, at that time, at the time that  
15 the NAV error occurred, was there a contract in  
16 place between HCMFA and the debtor pursuant to  
17 which the debtor was providing services to  
18 HCMFA?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. Yes.

22 Q. Was that contract generally called a  
23 shared services agreement?

24 A. It was generally called that, but  
25 there were -- there were -- I mean, it -- it --

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2 it depends on who you talk to, but yes,  
3 generally, there were -- there are multiple  
4 agreements.

5 Q. Pursuant to one or more of those  
6 agreements, was the debtor providing certain  
7 services to HCMFA?

8 MR. MORRIS: Objection to the form  
9 of the question.

10 A. Yes.

11 Q. And can you at a very high level  
12 summarize in 2018 and 2019 what those services  
13 were?

14 A. Yes, there was a -- yes.

15 Q. Okay. Please -- please go -- go  
16 through a short summary.

17 A. There was a -- a cost reimbursement  
18 agreement between Highland Capital Management  
19 Fund Advisors and Highland Capital Management,  
20 L.P. That agreement was for what we referred  
21 to as front office services, so investment  
22 management, things of that nature.

23 There was I think what most people  
24 refer to as the shared services agreement that  
25 was -- that agreement was between Highland

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2 Capital Management Fund Advisors and Highland  
3 Capital Management for back office services.

4 Q. And can you summarize what you mean  
5 by back office services?

6 A. Those services were for accounting,  
7 finance, tax, valuation, HR, IT, you know,  
8 legal compliance, things of -- things of those  
9 nature -- or things of that nature, excuse me.

10 Q. So in the spring of 2019, do you  
11 recall whether HCMFA took the position that it  
12 was actually Highland that caused the NAV error  
13 to occur pursuant to the valuation services  
14 that Highland was providing?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I do not recall.

18 Q. Did you ever have any discussions  
19 with anyone, Jim Dondero or anyone in the first  
20 half of 2019 as to whether Highland, the  
21 debtor, that is, had any liability to HCMFA  
22 related to the NAV error?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. I do not recall.



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2 Q. And then you mentioned that the fund  
3 was being closed and some compensation related  
4 to that. Can you -- can you elaborate? What  
5 were you referring to?

6 A. Right. So the advisor, pursuant to  
7 board approval, put a proposal in front of the  
8 shareholders of the Highland Global Allocation  
9 Fund to convert it from an open-ended fund to a  
10 closed-end fund.

11 So an open-ended fund, when  
12 shareholders subscribe to the fund or redeem  
13 into the fund, they do it at NAV.

14 When it is -- when you have a  
15 closed-end fund, closed-end funds are -- are  
16 publicly-traded, like on the New York Stock  
17 Exchange, exchanges like that, and -- and  
18 shareholders or investors, they're not --  
19 they're -- they're not subscribing and  
20 redeeming with the fund. They are like shares  
21 of Apple.

22 Those shares of the Highland Global  
23 Allocation Fund trade on an exchange, and that  
24 is how you, you know, that is how, you know,  
25 you become an equity owner in the fund or you

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2 sell your shares and you are no longer an  
3 equity owner.

4 As part of that proposal, the  
5 advisor told shareholders if you -- if you vote  
6 for this proposal to -- to convert it from an  
7 open-ended fund to a closed-end fund, we will  
8 pay you some amounts of money. I forgot -- a  
9 certain number of points. I think it was  
10 like -- it was like two to three points or  
11 something -- something like that.

12 Q. Okay. You mentioned when Mr. Morris  
13 was asking you, going back to those two  
14 promissory notes, you will recall the 5 million  
15 and 2.4 million, you mentioned something to the  
16 effect that Mr. Dondero told -- told you to pay  
17 some moneys out of Highland. Do you remember  
18 that discussion with Mr. Morris?

19 A. I do.

20 Q. So, to the best of your  
21 recollection, did you have a discussion with  
22 Mr. Dondero about making some payments in May  
23 of 2019 out of Highland?

24 A. I recall, as I testified earlier,  
25 that I had a conversation with Mr. Dondero

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2 for -- for these amounts attributable to -- it  
3 was either the error -- you know, the error,  
4 and in that conversation he said, go get the  
5 money from Highland. I believe that is what I  
6 testified earlier, and that -- that is my  
7 recollection.

8 Q. Do you recall if that was an  
9 in-person meeting or some other mode for the  
10 meeting?

11 A. I -- I -- I recall that being  
12 in-person.

13 Q. Do you recall if anyone else was  
14 present, or was it just you and Mr. Dondero?

15 A. I recall just he and I.

16 Q. And the moneys that he told you to  
17 find from -- or get from Highland, was that in  
18 the amount of \$5 million and \$2.4 million?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. I believe so, but I would have to go  
22 back and look and see when those moneys were  
23 actually paid into the -- into the fund and,  
24 you know, when those transfers were done. If  
25 they were all done around that same time, then

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2 yes, I would say it was -- it was all related  
3 to that.

4 Q. Did Mr. Dondero tell you that those  
5 funds would be a loan from Highland to HCMFA?

6 A. I don't recall.

7 MR. MORRIS: Objection to the form  
8 of the question.

9 Q. Now, and forgive me, I'm probably  
10 the only non-American born here, but I speak  
11 reasonably well in English. I don't recall,  
12 does that mean you don't remember or does that  
13 mean it didn't happen?

14 MR. MORRIS: Objection to the form  
15 of the question.

16 A. It -- it means I don't -- I don't  
17 remember.

18 Q. Did Mr. Dondero tell you to have  
19 those two promissory notes prepared?

20 A. I don't recall.

21 Q. When you -- again, when you say, I  
22 don't recall today, that means that sitting  
23 here today, you just don't remember one way or  
24 the other. Is that accurate?

25 A. Yes.

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2 Q. Is it possible that you, having  
3 heard what Mr. Dondero said and seeing funds  
4 being transferred, assumed that that would be a  
5 loan without him actually telling you that  
6 would be a loan?

7 MR. MORRIS: Objection to the form  
8 of the question.

9 A. Sorry, I want to make sure -- did I  
10 ask the amounts that were transferred that I --  
11 that -- that I assumed that that was a loan?

12 Q. Well, let me -- let me take -- let  
13 me try again.

14 So you have established already that  
15 there were quite a number of promissory notes  
16 back and forth -- I'm sorry, quite a number of  
17 promissory notes with affiliated companies and  
18 individuals owing Highland money; right?

19 A. Yes.

20 Q. And you have established that there  
21 were many transactions and transfers going back  
22 and forth over the years; right?

23 MS. DANDENEAU: Objection to form.

24 A. In -- yes, in my capacity as CFO and  
25 my employment, yes, that is -- yes.

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2 Q. And that's part of the reason why  
3 you just can't remember some of the details  
4 today because this -- this happened years ago,  
5 and there were a number of transactions. Is  
6 that accurate?

7 MS. DANDENEAU: Objection to the  
8 form.

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. I mean, I deal with thousands of --  
12 of -- of -- of transactions, you know, whether  
13 it has -- the processing of transactions, you  
14 know, if it has got, you know, more -- more  
15 zeros, you know, behind it than others.

16 When you look at thousands of  
17 transactions over the years for funds and  
18 advisors and -- and, you know, financial  
19 statements, I mean, it is -- it is very hard  
20 going back in -- in -- in my -- you know,  
21 14-ish year career at -- at Highland to  
22 remember a lot of those details, especially  
23 when I don't have any records or books or  
24 anything like that, and -- and going back many  
25 years.

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2 Q. And that is fine. That -- that --  
3 that is why I asked the question.

4 Is it possible in May of 2019 when  
5 Mr. Dondero told you to transfer the funds from  
6 Highland, you just assumed on your own that  
7 those would be loans without him actually  
8 telling you that those would be loans?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. I don't know.

12 Q. I'm sorry, you --

13 A. I said I don't know.

14 Q. Okay. Well, as the -- as the CFO  
15 for Highland, if you saw \$7.4 million going  
16 out, you would feel some responsibility to  
17 account for that, wouldn't you?

18 MR. MORRIS: Objection to the form  
19 of the question.

20 A. Yes.

21 Q. Is it fair to say that those would  
22 be in the range large enough to rise up to your  
23 level?

24 MR. MORRIS: Objection to the form  
25 of the question.

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2 A. If -- I don't know if I understand  
3 your question. Those amounts would arise to my  
4 level where I would be involved or...

5 Q. You would want to know what a  
6 transfer for that amount, \$7.4 million, was all  
7 about, as the CFO of Highland, wouldn't you?

8 MR. MORRIS: Objection to the form  
9 of the question.

10 A. Yes, I make it -- I mean, I -- I  
11 review all sorts of payments, I mean, even  
12 smaller dollar payments on a periodic basis,  
13 you know, to -- to -- to understand and to make  
14 sure that we are paying things in a -- you  
15 know, in -- in -- in an informed way. And, you  
16 know -- and we're -- and we're paying things  
17 pursuant to vendor contracts and things like  
18 that.

19 Q. So as part of that, is it possible  
20 that seeing \$7.4 million go out you would have  
21 promissory notes made in order to keep a paper  
22 trail, assuming that those were loans, when  
23 perhaps they were never intended to be loans by  
24 Mr. Dondero?

25 MR. MORRIS: Objection to the form



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2 of the question.

3 A. I don't know. As I testified  
4 earlier, I had conversations with Mr. Dondero  
5 about -- about the -- the -- the moneys that  
6 were needed for the NAV error. And I recall  
7 him saying go get it from Highland -- or get it  
8 from Highland.

9 Q. Well, why did you sign those  
10 promissory notes and why didn't you have him  
11 sign them?

12 MR. MORRIS: Objection to the form  
13 of the question.

14 A. I don't know. I don't know.

15 Q. You mentioned earlier that you  
16 typically don't sign promissory notes. Am I  
17 remembering your testimony correctly?

18 I mean, promissory notes on behalf  
19 of the entities. Not yourself, obviously.

20 A. Yes, that is what I said earlier.

21 Q. Do you recall any other promissory  
22 notes in the million-plus range that you had  
23 ever signed before on behalf of any entity?

24 A. There is -- there has been a lot of  
25 transactions over the years. I don't -- I

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2 don't -- I don't recall generally. I don't --  
3 I don't recall.

4 Q. So -- but to the best of your  
5 recollection, it was on your initiative,  
6 following your discussion with Mr. Dondero,  
7 that you had someone draft those two promissory  
8 notes; is that correct?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. Yes, we would have -- the team, as I  
12 stated earlier, we don't draft promissory  
13 notes. "The team" meaning the accounting and  
14 finance team.

15 So the team would have worked with  
16 the legal group at Highland to draft any notes.

17 Q. Do you believe or do you have any  
18 recollection as to whether you would have done  
19 that pursuant to an email or telephone call or  
20 in-person meeting?

21 MR. MORRIS: Objection to the form  
22 of the question.

23 A. Are you asking if I would have -- if  
24 those notes would have been drafted pursuant to  
25 an email or phone call?

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2 Q. Strike that.

3 Do you recall whether you sent an  
4 email to anyone asking them to draft those two  
5 promissory notes?

6 A. I don't recall because, again,  
7 once -- I would have instructed -- likely  
8 instructed the team to -- to work with the  
9 legal group to draft these documents.

10 I -- I -- I -- yeah, I didn't -- I  
11 mean, that is more an operational-type  
12 procedure. So, you know, a manager or a  
13 controller or working with legal. You know,  
14 they -- they can certainly handle that task to  
15 get that -- you know, to request that from  
16 legal.

17 Q. And who on your team do you think  
18 you would have asked to do that?

19 MR. MORRIS: Objection --

20 Q. Who would have been the logical  
21 person or people, if you don't remember their  
22 name today?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. It -- it -- there is only two

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2 managers of the group. That would have been  
3 Dave Klos or Kristin Hendrix.

4 Dave was the -- one of his duties  
5 was managing the valuation team, and so he was  
6 intimately involved with this process. So, you  
7 know...

8 Q. Okay.

9 A. I don't recall specifically but, I  
10 mean, my general -- you know, I -- I -- I  
11 likely would have talked to Dave first about it  
12 versus someone like Kristin who hadn't been  
13 intimately involved.

14 Q. And -- and do you have a view as to  
15 whether it is most likely that you would have  
16 done that by email or in-person or how would  
17 you believe you would have communicated that to  
18 Mr. Klos?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. I likely would have done that in  
22 person. Again, if things of this nature  
23 that -- again, you have to put ourselves back  
24 to, we have been working on this very stressful  
25 project for many, many months. And once the

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2 go-ahead was to -- you know, we see the light  
3 at the end of the tunnel with wrapping this up  
4 and making shareholders whole -- sorry to say  
5 "we" -- you know, the -- so the folks that are  
6 involved in it.

7 I like to talk to people  
8 face-to-face and -- and -- and go to -- and go  
9 to their desk, because that shows if I'm going  
10 to their desk that -- that is something that I  
11 want done, you know.

12 Q. And do you remember, Mr. Waterhouse,  
13 getting those two promissory notes in paper  
14 format or by email before they were executed?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I don't recall.

18 Q. For whatever was the ordinary course  
19 back then in May 2019, would you expect to have  
20 received them only on paper or would you have  
21 expected to have received them in Word document  
22 or PDF document by email?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. I -- I didn't sign -- I signed very

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2 few documents via email. I can't say that it  
3 never happened, but people either stopped by my  
4 office and physically walked in documents for  
5 signature that we discussed face-to-face.

6 Or documents were -- if -- if --  
7 if -- if -- let's say I wasn't there or I  
8 wasn't available, documents were dropped off.  
9 I had -- I had some in- and outboxes in front  
10 of my -- my office there at the Crescent.

11 Documents would be dropped off for  
12 signature. There would be a cover sheet that  
13 would be -- have been applied to those  
14 documents detailing, you know, who dropped it  
15 off, the purpose, why, what time.

16 And then, you know, as I stated, I  
17 don't draft documents and I always go to the  
18 legal group and the compliance group to make  
19 sure that they're in the loop. And there is  
20 a -- a box or section that says, Has legal  
21 reviewed or approved, or something to that  
22 nature.

23 Again, I don't -- I don't have  
24 access to that cover sheet anymore, but it  
25 was -- it was something to that effect.

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2 And my assistant, you know, if she  
3 was there, she would review that -- you know,  
4 whatever was being dropped off. And if that  
5 has legal, you know, reviewed or -- reviewed or  
6 approved it, if that wasn't -- if that stuff  
7 hadn't been done, it was like she would just  
8 tell them like, go -- go -- go to the legal  
9 group, because --

10 Q. Let me -- let me pause --

11 MS. DANDENEAU: Let him finish.

12 MR. MORRIS: Thank you. Go ahead.

13 A. I take -- go to the legal group  
14 because that -- that was my -- you know, I  
15 didn't -- I didn't review anything that -- that  
16 they weren't -- you know, or there wasn't some  
17 representation made to me that they had  
18 reviewed, approved in some capacity.

19 Again, my -- my -- my goal, as CFO,  
20 is to provide transparency and make sure that  
21 groups like compliance and other things -- and  
22 the other group in legal are -- are in -- you  
23 know, their -- they're made aware of  
24 transactions of -- you know, that are crossing  
25 my desk.

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2 Because I'm not in every  
3 conversation. They're not in every  
4 conversation -- meaning legal compliance -- and  
5 I just want to make sure that -- that everyone  
6 is in sync to, you know, to -- to the extent  
7 possible.

8 Q. So if we summarize, you don't  
9 specifically remember signing these two notes,  
10 but most likely it would have been that they  
11 would have presented -- been presented to you  
12 physically on paper?

13 MR. MORRIS: Objection to the form  
14 of the question.

15 A. They would -- they would have been  
16 presented physically on paper most likely or  
17 someone would have left it. But, I mean,  
18 again, I don't -- I don't recall.

19 Q. I understand. Understand.

20 When you signed -- when you signed  
21 documents, when you personally signed  
22 documents, did you typically use a ink pen or  
23 did you use a stamp?

24 A. No, I -- I -- I use a -- an -- an  
25 ink pen.



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2 Q. Do you know -- was there a file at  
3 Highland kept anywhere with ink-signed  
4 originals of a promissory notes in general or  
5 these two promissory notes specifically?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. Sorry, I just want to make sure I  
9 understand your question. Are you saying is  
10 there a file somewhere that has ink-signed  
11 originals of these two promissory notes?

12 Q. Yes.

13 A. I would -- I would assume they're  
14 some place. I mean --

15 Q. Well, was there a -- was there a  
16 place where Highland generally kept originals  
17 of promissory notes owed to it?

18 A. I wouldn't -- no.

19 MR. RUKAVINA: Mr. Nguyen, would you  
20 please pull up my A7, alpha 7.

21 Q. These are the two promissory notes,  
22 Mr. Waterhouse.

23 (Exhibit A7 marked.)

24 Q. And please -- Mr. Waterhouse, please  
25 command my associate to scroll down as you need

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2 to, but I want you to take a very close look at  
3 your two signatures here and tell me whether  
4 you believe, in fact, that you ink signed them  
5 or whether you --

6 MS. DANDENEAU: Mr. Rukavina,  
7 Mr. Waterhouse has the copies.

8 MR. RUKAVINA: Perfect. Then you  
9 can take this down, Mr. Nguyen.

10 A. These -- these -- these signatures  
11 are identical, now that I stare at them, and I  
12 mean, they are so close -- I mean, they're  
13 identical that, I mean, even with my chicken  
14 scratch signature, I don't know if I can -- you  
15 know, I do this 100 times, could I do that  
16 as -- as precisely as I see between the two  
17 notes.

18 Q. Well, that is why I ask.  
19 Mr. Waterhouse, now that you have examined  
20 them, does it seem like it is more likely that  
21 you actually electronically signed these?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Is -- I don't -- I don't recall  
25 specifically. As I said before, my assistant

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2 did have a -- an electronic signature, and that  
3 was used from time to time. It wasn't as  
4 common practice back in 2019. It definitely  
5 was more common practice when we had to work  
6 from home and remotely for COVID because it  
7 that made it almost impossible to, right,  
8 provide wet signatures since we're all working  
9 from home remotely.

10 Q. Well, going just for these two  
11 promissory notes, Mr. Waterhouse, in light of  
12 your inability to remember any details, are you  
13 sure you actually signed either or both of  
14 those notes?

15 MS. DANDENEAU: Objection to form.

16 A. I don't recall specifically  
17 signing -- actually physically signing these  
18 notes. As I said before, I don't recall doing  
19 that. This -- this looks like my signature,  
20 but yet these two signatures are identical.

21 Q. So you don't recall physically  
22 signing them, and I take it you don't recall  
23 electronically signing them either?

24 A. I don't recall. You know, Highland  
25 has all my emails. If that occurred, you know,

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2 you know, I don't have any of these records is  
3 what I'm saying. I don't have any of those  
4 records.

5 Q. That is why I'm asking you these  
6 questions in great detail because I don't have  
7 those emails. I'm trying to -- I'm hoping that  
8 you will give me some names or some details so  
9 I can go look for more emails, but again, you  
10 don't remember any -- any individual, other  
11 than Mr. Dondero that we've discussed, you  
12 don't remember any individual with whom you  
13 discussed these promissory notes prior to their  
14 execution?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I don't recall discussing it with  
18 anybody else.

19 Q. Okay.

20 A. I mean, prior --

21 Q. I understand.

22 A. You know, there was no one else --  
23 there was no one else in that meeting that I  
24 recall with Mr. Dondero.

25 Q. Now, when you established that by

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2 May of 2019 --

3 A. And -- and from what I recall, and  
4 the reason why I was by myself is -- is, you  
5 know, I don't -- I don't want to speculate, I'm  
6 sorry.

7 Q. Okay. We have established that by  
8 May of 2019, in your view, the liabilities of  
9 HCMFA exceeded its assets; correct?

10 A. Yeah. I mean, again, I don't have  
11 financial statements in front of me, but I  
12 think, if I recall, we'd have to go through the  
13 testimony with Mr. Morris, I believe that was  
14 the case.

15 Q. In fact, you will recall that in  
16 April of 2019, Mr. Dondero signed a document  
17 that extended the demand feature of two prior  
18 notes to May 31, 2019. Do you recall that?

19 MS. DEITSCH-PEREZ: I think you  
20 might -- maybe have the court reporter read  
21 that back. You might have misspoke.

22 (Record read.)

23 MR. RUKAVINA: And I did misspeak.

24 Q. I meant to say to May 31, 2021. Do  
25 you recall that, sir?

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2 MR. MORRIS: Objection to the form  
3 of the question.

4 A. Yes.

5 MR. RUKAVINA: And, Mr. Nguyen, just  
6 so that the record is clear, will you please  
7 pull up my Exhibit Alpha 10, A10.

8 (Exhibit A10 marked.)

9 Q. You don't have this one in front of  
10 you, Mr. Waterhouse? This is the one that  
11 Mr. Morris used earlier. Do you see that  
12 document, sir?

13 A. Yes, I do.

14 Q. And this is what you were testifying  
15 about before when Mr. Morris was asking you.  
16 Do you remember that?

17 A. Yes.

18 Q. So here is my question for you,  
19 Mr. Waterhouse: As the chief financial officer  
20 of Highland, was it prudent for Highland less  
21 than three weeks later to be lending  
22 \$7.2 million to an insolvent entity that  
23 couldn't even then pay its debts back to  
24 Highland?

25 MS. DANDENEAU: Objection to form.

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2 MR. MORRIS: Objection to the form  
3 of the question.

4 A. Sorry, I just want to make sure --  
5 are you asking me, did you say, was it prudent  
6 for Highland to loan \$7.4 million to HCMFA a  
7 few weeks after this document was executed?

8 Q. Yes, and at a time when HCMFA's  
9 liabilities exceeded its assets.

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. I don't -- it is odd. I don't know.

13 MR. RUKAVINA: You can take this  
14 exhibit down, Mr. Nguyen.

15 Q. Do you recall asking anyone,  
16 Mr. Dondero or -- or anyone outside as to  
17 whether Highland ought to be lending  
18 \$7.4 million to HCMF regarding HCMF's  
19 creditworthiness?

20 MR. MORRIS: Objection to the form  
21 of the question.

22 A. I don't recall.

23 Q. Did you receive personally any of  
24 that \$7.4 million?

25 A. No.

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2 Q. Did you even --

3 MR. MORRIS: I didn't hear that  
4 question, sir.

5 MR. RUKAVINA: The one that he  
6 answered, John, or my new one?

7 MR. MORRIS: No, no, your question,  
8 Davor.

9 MR. RUKAVINA: I had asked him  
10 whether he received any of the  
11 \$7.4 million. He said no.

12 MR. MORRIS: Yeah. I thought there  
13 was a question after that. Maybe I was  
14 mistaken. I apologize.

15 MR. RUKAVINA: I had started a new  
16 question, so here, let me start the new  
17 question again.

18 Q. Did you personally receive any  
19 direct benefit from those two notes for  
20 \$7.4 million?

21 A. No.

22 Q. Did you ever personally consider  
23 yourself obligated to repay either or both of  
24 those notes?

25 A. No.



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2 MR. RUKAVINA: Pull up those notes  
3 again, Mr. Nguyen.

4 Q. You can have them in front of you,  
5 Exhibit 7, Mr. Waterhouse, whatever is easier  
6 for you. If you go to your signature page, my  
7 question to you is, why did you not include  
8 your title as treasurer by your name, Frank  
9 Waterhouse?

10 MS. DANDENEAU: Objection to form.

11 A. I didn't -- I didn't draft this  
12 document.

13 Q. So you relied on whoever drafted it  
14 to draft it correctly?

15 A. Yes.

16 Q. Okay. But back then when you signed  
17 this, did it ever cross your mind that you were  
18 the maker on these notes?

19 A. No.

20 Q. Back then when you signed this  
21 document, did it ever cross your mind that you  
22 could be a co-obligor on these notes?

23 A. No. I didn't receive \$7.4 million,  
24 I mean...

25 Q. But can you say that HCMFA received

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2 \$7.4 million?

3 A. I would have to go back and look and  
4 check in, you know, the -- the financial  
5 records and the bank statements.

6 MR. RUKAVINA: You can take this  
7 exhibit down, Mr. Nguyen.

8 Q. Mr. Waterhouse, I'm not trying to be  
9 a smart-ass, but if the law says that because  
10 of the way that you signed this promissory  
11 note, if that is what the law says, that that  
12 made you personally -- personally liable, then  
13 you would agree with me that that was never  
14 your intent?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. That was never -- I wouldn't sign a  
18 note and not get consideration in return.

19 Q. So putting all other issues aside,  
20 if the law -- if the law says that you were  
21 liable for those notes because of how you  
22 signed them, then would you agree with me that  
23 these notes are a mistake?

24 MR. MORRIS: Objection to the form  
25 of the question.

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2 MS. DANDENEAU: Objection to the  
3 form.

4 A. Yes.

5 Q. So do you agree with me that it's  
6 odd -- I think that is the word you used --  
7 that Highland would be loaning \$7.4 million a  
8 few weeks after that extension to an entity  
9 whose liabilities exceeded its assets, and you  
10 would agree with me that it was never your  
11 intention to be in any way liable for these two  
12 promissory notes; correct?

13 MR. MORRIS: Objection to the form  
14 of the question.

15 A. Sorry, you -- you asked a lot there.

16 MR. RUKAVINA: I will strike it and  
17 I will move on.

18 Let's go to -- pull up Exhibit 9,  
19 please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha  
20 9, A9.

21 (Exhibit A9 marked.)

22 Q. Sir, take a moment to look at this,  
23 but this is an email, and you will see attached  
24 July 31, 2020 affiliate notes.

25 Do you see that attachment?

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2 A. Yes.

3 Q. Okay. And do you see an entry for  
4 Highland Capital Management Fund Advisors?

5 MR. MORRIS: I'm sorry, hold on.

6 Where are you looking?

7 MR. RUKAVINA: Last page, John.

8 MR. MORRIS: Is it the page on the  
9 screen?

10 MR. RUKAVINA: Oh, I'm sorry.

11 Mr. Nguyen just did it. Yes, the last page  
12 there.

13 MR. MORRIS: Thank you.

14 Q. Do you see an entry there for HCMFA?

15 A. Yes.

16 Q. About \$10.5 million.

17 Do you see that?

18 A. I do.

19 Q. And, now, do you have any  
20 explanation for why if HCMFA owed \$7.4 million,  
21 plus the 5.3 million that had been extended,  
22 why that amount was only 10.5 million?

23 A. I don't know. Okay.

24 MR. RUKAVINA: Close this one and  
25 pull up, Mr. Nguyen, the schedules,

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2 schedule of assets. What exhibit is this  
3 of ours, Mr. Nguyen?

4 MR. NGUYEN: This is A11.

5 MR. RUKAVINA: Oh, this will be A11.

6 (Exhibit A11 marked.)

7 Q. You don't have this in front of you,  
8 Mr. Waterhouse?

9 A. Okay.

10 Q. This is what Mr. Morris used  
11 earlier. Do you remember looking at this with  
12 Mr. Morris?

13 A. Yes.

14 MR. RUKAVINA: You might have to  
15 zoom in a little. Okay.

16 Q. Now, I see Affiliate Note A, B, and  
17 C.

18 Do you have any recollection as to  
19 why the names of the affiliates are omitted?

20 A. I don't. I testified earlier that,  
21 you know, the team worked with DSI in providing  
22 these. I -- I don't -- I don't know.

23 Q. Can we deduce -- is it logical to  
24 deduce that Affiliate Note A would be NexPoint  
25 given its size of \$24.5 million?

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2 MR. MORRIS: Objection to the form  
3 of the question.

4 A. I mean, it -- it is a -- it is -- it  
5 is approximate.

6 Q. Well, can we -- can we deduce -- or,  
7 I'm sorry, strike that.

8 Can you, sitting here today,  
9 logically conclude that Affiliate Note B or C  
10 represents HCMFA?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. I don't know. I don't know. I  
14 can't.

15 Q. Okay. As of the petition date, we  
16 have established that HCMFA, under promissory  
17 notes, owed \$7.4 million and \$5.3 million to  
18 the debtor; correct?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. Yes.

22 Q. Okay. And by my reckoning, that  
23 would be somewhere approaching \$13 million.

24 MR. MORRIS: Objection to the form  
25 of the question.

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2 Q. It would be \$12.7 million. Is that  
3 generally correct?

4 A. Sorry, the amounts were 7.4, 5.3.

5 Q. Yes.

6 A. Okay. Yeah, that -- that -- I can  
7 do that math, yes.

8 Q. Do you have any explanation or any  
9 understanding of why there is no similar entry  
10 listed here on the schedule of assets filed  
11 with the bankruptcy court?

12 MR. MORRIS: Objection to the form  
13 of the question.

14 A. I don't know. We have to look at  
15 the supporting schedules, like I talked about  
16 other -- presumably there is -- there is a  
17 build to the schedule that would provide the  
18 detail.

19 Q. Well, that was going to be my next  
20 question. You anticipated it.

21 MR. RUKAVINA: You can -- you can  
22 take this down, Mr. Nguyen.

23 Q. Do you believe that whenever you and  
24 your team provided the underlying data to the  
25 financial advisor that the actual names of the

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2 affiliates for Affiliate Note A, B, and C would  
3 have been listed there?

4 A. Are you asking we provided the names  
5 to the financial advisor? I don't -- I don't  
6 understand who the financial advisor is.

7 Q. I'm sorry, DSI.

8 Let me ask the question this way,  
9 Mr. Waterhouse.

10 Whenever you provided information  
11 about the affiliate notes to DSI, do you  
12 believe that you would have included the actual  
13 names of the affiliates, you or your team, or  
14 that you would have done the Affiliate Note A,  
15 Note B, Note C?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 MS. DANDENEAU: Objection to the  
19 form.

20 A. We -- like I testified earlier, when  
21 we were -- we gave everything to -- to DSI. We  
22 were giving all of our records, all of our  
23 files, everything to DSI. We weren't redacting  
24 information or saying, hey, here is a note,  
25 here is Affiliate Note A or B.



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2 I mean, it was -- our job and our  
3 focus -- and I testified in court back in 2019;  
4 right -- was -- was to be transparent and, you  
5 know, get DSI up to speed on -- on the matters  
6 at Highland. So I can't see us redacting at  
7 that point.

8 MR. RUKAVINA: Mr. Nguyen, will you  
9 please pull up Mr. Morris' Exhibit 36.

10 Just the very first page, the very top  
11 email. You might zoom in a little bit.

12 Q. Now, you recall being asked about  
13 this by Mr. Morris?

14 A. Yes, I do.

15 Q. And you wrote: The HCMFA note is a  
16 demand note.

17 You wrote that; right?

18 A. Yes.

19 Q. And, in fact, weren't there by that  
20 point in time several notes?

21 A. Yes, there were. Again, I don't --  
22 I don't remember everything specifically. I  
23 mean --

24 Q. I understand. I understand.

25 So this is an example where -- where

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2 you might have made a mistake by referring to a  
3 singular instead of a plural; right?

4 A. Yes.

5 Q. Okay. And you -- you wrote -- a  
6 couple of sentences later, you wrote: There  
7 was an agreement between HCMLP and HCMFA the  
8 earliest they could demand is May 2021.

9 You wrote that; right?

10 A. Yes.

11 Q. But I think you -- you agreed with  
12 Mr. Morris that that can't possibly apply to  
13 the May 2019 notes, can it?

14 MR. MORRIS: Objection to the form  
15 of the question. That is not what he  
16 testified to.

17 Q. Let me ask -- let me ask a different  
18 question.

19 Sitting here today -- or if you can  
20 answer me from your memory on October 6,  
21 2020 -- did the April acknowledgment that  
22 extended the maturity date apply to the  
23 May 2019 notes also?

24 A. I don't recall specifically.

25 Q. Well, you recall that the notes that

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2 you signed were demand notes; right?

3 A. Yes.

4 Q. Do you find it logical, based on  
5 your experience, that had they intended to have  
6 a different or a set maturity date, you would  
7 have instructed that that set maturity date be  
8 included instead of a demand feature?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. Sorry, just want to make sure I  
12 understand. You are saying that -- that the  
13 \$5 million note, the \$2.4 million note, if  
14 those were supposed to be a term note, that I  
15 would have made sure that those were a term  
16 note?

17 Q. I'm saying -- I'm saying,  
18 Mr. Waterhouse, that on May the 2nd and May the  
19 3rd, 2019, if you intended that those two  
20 promissory notes could not be called until May  
21 2021, would you have included such language in  
22 those two promissory notes?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. I guess -- I'm sorry, I don't recall

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2 putting language in those May notes. I don't  
3 remember what language you are referring to.

4 Q. Well, let's read this again.

5 There was an agreement between HCMLP  
6 and HCMFA the earliest they could demand is May  
7 2021.

8 Do you recall that agreement?

9 A. Yes, that was the agreement we  
10 looked at earlier; correct?

11 Q. Okay. Yes.

12 Do you -- do you understand now that  
13 that agreement that we looked at earlier also  
14 applied to the May 2019 notes that you signed?

15 A. I don't -- I don't know.

16 Q. But as of October 6, 2020, you're  
17 writing that there is one demand note and  
18 you're categorizing that demand note as not  
19 being demandable on May 2021; correct?

20 A. Yes.

21 Q. And you know now that you made at  
22 least one mistake in this email; correct?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. Yes.

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2 MR. RUKAVINA: You can pull this  
3 down, Mr. Nguyen.

4 Q. So, Mr. Waterhouse, you don't  
5 remember Mr. Dondero telling you to make these  
6 loans or not. HCMLP was loaning \$7.4 million  
7 to someone that their assets were less than  
8 their liabilities.

9 We don't see on the July list of  
10 notes, where there is \$12.7 million of notes,  
11 we don't see that on the bankruptcy schedules,  
12 and we have this Exhibit 36 where you are  
13 confused.

14 Are you prepared to tell me, sir,  
15 today that you might have made a mistake in  
16 executing those two promissory notes?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. I -- I don't know.

20 Q. And if it turns out that you're  
21 personally liable for those promissory notes,  
22 it would certainly be a mistake, wouldn't it?

23 MS. DANDENEAU: Objection to the  
24 form.

25 MR. MORRIS: Join.

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2 A. Yes.

3 Q. If Mr. Dondero testifies that he  
4 never told you to make these loans, would you  
5 disagree with his testimony?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. Like I testified earlier with my  
9 conversation with Mr. Dondero, all I recall is  
10 he said, get the money from Highland.

11 Q. And if Mr. Dondero testifies that  
12 he, in consultation with other senior personnel  
13 at Highland, decided that Highland needed to  
14 pay HCMFA \$7.4 million as compensation for the  
15 NAV error and not a loan, would you have any  
16 reason to disagree with Mr. Dondero?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. If that was -- if that was his  
20 intent, yes, it would -- I would --

21 Q. Do you have any reason to disagree  
22 with him?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. If that was his intent, I don't

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2 know. I don't know how I disagree with that.

3 Q. And just to confirm, you don't  
4 remember ever asking Mr. Dondero whether you  
5 should have two promissory notes prepared?

6 A. No.

7 Q. And you don't remember discussing  
8 with Mr. Dondero what the terms of those two  
9 promissory notes should be?

10 A. I don't recall -- I testified all I  
11 recall is he said, get the money from Highland.  
12 I don't -- the -- the terms of the note, I  
13 don't recall ever having a discussion around  
14 the terms of the note, but since I don't draft  
15 the notes, that -- there could have been a  
16 conversation with other people later.

17 Q. Do you have any memory of whether  
18 after the notes were drafted, but before you  
19 signed them, that you communicated with  
20 Mr. Dondero in any way to just confirm or -- or  
21 get his blessing or ratification to signing  
22 those notes?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. I don't recall.

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2 Q. Again, the only thing you remember,  
3 sitting here today, was Mr. Dondero said, get  
4 the money from Highland, and that is it, that  
5 is all you remember?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. I testified to that several times.  
9 This was over two years ago. A lot has  
10 happened. That is all I recall.

11 Q. And help me here. I'm not very  
12 technologically astute. When you -- and I -- I  
13 recognize that you do it rarely, but when you  
14 sign a document electronically, do you believe  
15 that there is an electronic record of you  
16 having authorized or signed a document  
17 electronically?

18 MR. MORRIS: Objection to the form  
19 of the question.

20 A. I -- I don't know the tech answer to  
21 that, but, you know, since I don't have -- I  
22 don't ever attach my signature block  
23 electronically, my assistant would have done  
24 that, and if that is done over email like we  
25 did several times -- you know, multiple,



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2 multiple times over COVID, she would attach my  
3 signature block and then email it out to  
4 whatever party.

5 Q. What was your assistant's name in  
6 May 2019?

7 A. It was Naomi Chisum.

8 Q. Is she the only one? I'm sorry, was  
9 she your only assistant that would have maybe  
10 facilitated logistically something like you  
11 just described?

12 A. You know, she was out on maternity  
13 leave at some point. I don't -- I don't recall  
14 those dates where she was out for maternity  
15 leave. There was -- there were folks backing  
16 her up. I don't recall specifically who  
17 those -- who those, you know, administrative  
18 assistants were, and I don't recall  
19 specifically if she was out during this time on  
20 maternity leave.

21 I do know that that she was out for  
22 a period of time, or who knows, or she could  
23 have been on vacation that day or, you know, I  
24 don't know.

25 Q. Switching gears now, the two

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2 complaints that have been filed that is against  
3 HCMFA and NexPoint, did you see any drafts of  
4 those complaints before they were filed?

5 MR. MORRIS: Objection to the form  
6 of the question, and to the extent that you  
7 had any communications with counsel or you  
8 were shown drafts of the complaints by  
9 counsel while you were employed by  
10 Highland, I direct you not to answer.

11 A. I -- I reviewed documents yesterday  
12 with counsel here. I believe that is the first  
13 time I have ever seen those.

14 Q. Okay. Did you ever discuss with  
15 Mr. Seery these two lawsuits before or after  
16 they were filed?

17 A. I don't recall.

18 Q. Were you ever interviewed by legal  
19 counsel, to your knowledge, about these  
20 promissory notes before the complaints were  
21 filed? Without going into what was said, were  
22 you ever interviewed by legal counsel?

23 MR. MORRIS: Objection to the form  
24 of the question.

25 A. I don't recall.

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2 Q. Obviously with COVID, it changed,  
3 but -- but before COVID, did you used to meet  
4 with Mr. Seery from time to time in-person?

5 A. Yeah, I mean, so before COVID -- so  
6 we're talking kind of late March, early April,  
7 right, there was about -- I don't remember the  
8 specific date when the board for Highland was  
9 appointed. I believe it was around February of  
10 2020, so maybe there was a month-and-a-half,  
11 two-month window where we were meeting  
12 in-person or, you know, like we were actually  
13 in the office, excuse me, we were in the  
14 office.

15 And, you know, when they were first  
16 appointed, the board members and Mr. Seery  
17 were -- were definitely down here more  
18 in-person.

19 Q. Did you ever see Mr. Seery taking  
20 written notes of -- of his meetings with you or  
21 others?

22 A. I don't recall.

23 Q. Do you recall on any Zoom or video  
24 conference with Mr. Seery, seeing him take  
25 notes, written notes?

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2 A. The Zoom calls we had, I don't  
3 recall having seen video or, you know, or if it  
4 was on Zoom, I just remember it being -- well,  
5 no, you know what, there were some -- you know,  
6 I take that back.

7 So there were -- there were some  
8 times that I did remember seeing Mr. Seery  
9 on -- on some of the Zoom calls.

10 Q. Well, let me --

11 A. I don't -- sorry, I'm thinking. I'm  
12 thinking -- I'm going back. I'm trying to  
13 process this.

14 Q. I can make it much quicker,  
15 Mr. Waterhouse. I have heard -- I have heard  
16 that Mr. Seery is a copious note taker.

17 Do you have any knowledge about  
18 that?

19 A. No.

20 Q. Okay. Switching gears yet again,  
21 and this will be last theme. Do you need a  
22 restroom break, or are you good to go for  
23 another half an hour?

24 MS. DEITSCH-PEREZ: I need a  
25 restroom break.

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2 MR. RUKAVINA: Can we make it five  
3 minutes?

4 THE WITNESS: Five minutes would be  
5 great.

6 VIDEOGRAPHER: We're going off the  
7 record at 5:53 p.m.

8 (Recess taken 5:53 p.m. to 5:59 p.m.)

9 VIDEOGRAPHER: We are back on the  
10 record at 5:59 p.m.

11 Q. Mr. Waterhouse, I had asked you  
12 earlier about contracts between HCMFA and the  
13 debtor, and now I'm going to talk about  
14 contracts between the debtor and NexPoint  
15 Advisors. Okay?

16 A. Okay.

17 Q. Now, were there contracts similar to  
18 the ones with HCMFA that NexPoint had in the  
19 nature of employee reimbursement and shared  
20 services?

21 A. Yes, they -- NexPoint Advisors and  
22 Highland Capital Management Fund Advisors had  
23 cost reimbursement and shared services  
24 agreements with Highland Capital Management,  
25 L.P.

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2 Q. And was that shared services  
3 agreement, to the best of your understanding,  
4 in place as of December 31, 2020?

5 A. It was -- it was terminated at some  
6 point, and I remember the contracts had  
7 different termination dates, but I think the --  
8 the date of termination was January 31st of  
9 2021, after the termination was put in.

10 So yeah, it would be in place at the  
11 end of the year of December -- it would be in  
12 place at December 31st, 2020.

13 Q. And pursuant to that agreement as of  
14 December 31st, 2020, was the debtor providing  
15 what you would describe as back office services  
16 to NexPoint?

17 A. Yes.

18 Q. Would those have included accounting  
19 services?

20 A. Yes.

21 Q. And as part of those accounting  
22 services, would the debtor have assisted  
23 NexPoint with paying its bills?

24 MR. MORRIS: Objection to the form  
25 of the question.

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2 A. Yes.

3 Q. So let's break that up. You were a  
4 treasurer of NexPoint as well in December of  
5 2020?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. Yes.

9 Q. Okay. And in December of 2020, did  
10 NexPoint have its own bank accounts?

11 A. Yes.

12 Q. And did it use those bank accounts  
13 to pay various of its obligations?

14 A. Yes.

15 Q. Did employees of the debtor have the  
16 ability to cause transfers to be made from  
17 those bank accounts on behalf of NexPoint?

18 A. Yes.

19 Q. And is that one of services that the  
20 debtor provided NexPoint, basically ensuring  
21 that accounts payable and other obligations  
22 would be paid?

23 A. Yes.

24 MR. MORRIS: Objection to the form  
25 of the question.

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2 Q. You answered yes?

3 A. Yes.

4 Q. And the payments, though, whose  
5 funds would they be made from?

6 A. From the bank account of NexPoint  
7 Advisors. If they were NexPoint advisor  
8 obligations, it would be made from NexPoint  
9 Advisors' bank account.

10 Q. So let's pull up Exhibit Alpha 1.  
11 You should have that -- it is my Tab 1 or my  
12 Exhibit 1.

13 (Exhibit A1 marked.)

14 Q. So this is a -- this is a series of  
15 emails, Mr. Waterhouse. Let's look at the  
16 first page here, November 25, 2020, between  
17 Kristin Hendrix and yourself.

18 Do you see that, sir?

19 A. I do.

20 Q. And do you see where Ms. Hendrix  
21 writes: NPA.

22 Do you know what NPA stood for?

23 A. Yes.

24 Q. And what does it stand for?

25 A. NexPoint Advisors.



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2 Q. And was that how you-all internally  
3 at Highland refer to NexPoint Advisors, L.P.?

4 A. I mean, yes, amongst other things.

5 Q. And she writes at the bottom of her  
6 email: Okay to release?

7 Do you see that?

8 A. Yes, I do.

9 Q. So what --

10 MR. MORRIS: Hold on one second.

11 Okay. Go ahead.

12 MR. RUKAVINA: Yeah.

13 Q. So what is -- what is Ms. Hendrix  
14 here on November 25 asking of you?

15 A. She is asking me -- so she -- these  
16 are -- these are payments -- typically we would  
17 do an accounts payable run every week at the  
18 end of every Friday. But looking at this date,  
19 it is Wednesday, November 25th, which means, to  
20 me, it is likely Thanksgiving weekend.

21 So this is the day before  
22 Thanksgiving, so this is the last kind of --  
23 kind of day before the holidays and vacation  
24 and things of that nature. So it is  
25 effectively the Friday of that week.

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2 So she is -- she is putting in all  
3 the payments for the week because we batch  
4 payments weekly. And these are the payments  
5 that go out that week, and she is informing me  
6 of the payments and -- you know, again, at the  
7 bottom of the email, she is asking for my okay  
8 to -- to release these payments in the wire  
9 system.

10 Q. So these would be accounts payable  
11 of NexPoint?

12 A. I mean, it would be accounts payable  
13 for all of these entities listed on this email.

14 Q. And who was Ms. Hendrix employed by  
15 in November and December of 2020?

16 A. Highland Capital Management.

17 Q. Okay. So -- so part of the services  
18 that NexPoint had contracted with was for  
19 Highland to ensure that NexPoint timely paid  
20 its accounts payable; is that accurate?

21 MR. MORRIS: Objection to the form  
22 of the question. You have got to be  
23 kidding me.

24 Q. Is that accurate?

25 A. Yes.

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2 Q. And did NexPoint rely on employees  
3 of the debtor to ensure that NexPoint's  
4 accounts payable were timely paid?

5 MR. MORRIS: Objection to the form  
6 of the question.

7 A. Yes.

8 MR. RUKAVINA: Let's flip to the  
9 next page, Mr. Nguyen, if you will please  
10 scroll to the next page.

11 Q. So this is an email similar to the  
12 prior one, November 30th.

13 Do you see where it says, NPA HCMFA,  
14 USD \$325,000 one-day loan?

15 Do you see that, sir?

16 A. I do.

17 Q. Do you have any memory of what that  
18 was?

19 A. I don't recall what that -- what  
20 that payment was for.

21 Q. Did it sometimes occur that one  
22 advisor would, on very short-terms, make loans  
23 to another advisor?

24 A. Yes. This -- this -- this occurred  
25 from -- from -- from time to time. It actually

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2 looking at -- I'm -- I'm looking at the date of  
3 this email. It is November 30th. It is the  
4 last day of the month.

5 HCMFA has obligations it needs to  
6 pay to its broker-dealer, which is HCFD. And  
7 it likely was short funds to make those  
8 obligations under that -- under its agreement,  
9 and so it provided a one-day loan because on  
10 the next business day on 12/1 -- or the next  
11 business day in December, it would receive  
12 management fees from the underlying funds that  
13 it managed and it would be able to pay back  
14 that loan to NexPoint Advisors.

15 Q. So -- so here Ms. Hendrix was  
16 seeking your approval to transfer \$325,000 from  
17 NexPoint to HCMFA for a one-day loan; is that  
18 correct?

19 A. That is correct.

20 Q. Let's flip to the next page, sir.

21 MR. RUKAVINA: And, Mr. Nguyen, if  
22 you will please scroll down.

23 Q. Now we have as an entry for  
24 \$325,000, 11/30 loan payment.

25 Do you see that, sir?

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2 A. Yes.

3 Q. And that is probably the loan that  
4 was approved on the prior page?

5 A. Yes, most likely.

6 Q. So is it also true, sir, that in  
7 addition to accounts payable debtor employees  
8 would be assisting NexPoint with respect to  
9 paying back its debt?

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. I mean, yes, for loans of this  
13 nature, yes.

14 Q. Well, what about long term loans?  
15 Was it reasonable for NexPoint to expect debtor  
16 employees to ensure that NexPoint timely paid  
17 its obligations under long-term notes?

18 MR. MORRIS: Objection to the form  
19 of the question.

20 MS. DANDENEAU: Objection to form.

21 A. I mean, that is one of the things  
22 that the Highland personnel did provide to the  
23 advisors. Yes, we would -- we would -- over  
24 the years, yes, we -- we -- we -- we did do  
25 that generally. Again, I don't remember

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2 specifically but, yes, generally we -- you  
3 know, we did do that.

4 Q. So do you recall -- and we can pull  
5 it up, if need be -- that under the NexPoint  
6 note that Mr. Morris asked you about earlier,  
7 the one for more than \$30 million, that  
8 NexPoint was obligated to make an annual  
9 payment of principal and interest?

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. Yes, it was -- yes, it -- it was an  
13 amortizing note. It was -- you know, from what  
14 we reviewed earlier, it was payable by  
15 December 31st of each year. So -- but are --  
16 are you asking me --

17 Q. I'm just asking you, sir, if you  
18 recall the note.

19 A. Yes, the \$30 million note, yes, we  
20 reviewed it earlier, yes.

21 Q. And do you recall Mr. Morris had you  
22 go through the fact that NexPoint had made  
23 payments in years prior to 2020 on that note?

24 A. I do.

25 Q. And do you believe that employees of

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2 the debtor would have played any role in  
3 NexPoint having made those prior payments?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. Yes.

7 Q. And what role in years prior to 2020  
8 would employees of the debtor have had with  
9 respect to NexPoint making that annual payment?

10 A. We -- we -- we would have -- I keep  
11 saying "we." The team would have calculated  
12 any amounts due under that loan and other  
13 loans, as -- as standard course.

14 We would -- since we provided  
15 treasury services to the advisors, we would  
16 inform the -- the -- the -- we informed  
17 Mr. Dondero of any cash obligations that are  
18 forthcoming, whether we do cash projections.

19 If, you know, any of these payments  
20 would have -- or, you know, the sum total of  
21 all of these payments, including any note  
22 payments, if there were any cash shortfalls, we  
23 would have informed Mr. Dondero of any cash  
24 shortfalls. We could adequately plan, you  
25 know, in instances like that.

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2 Or, sorry, we -- I say "we" -- I  
3 keep saying "we" -- I keep wearing my -- again,  
4 my -- my treasurer hat.

5 But, yes, it is to -- it is to  
6 inform Mr. Dondero of the obligations of the  
7 advisors in terms of cash and obligations that  
8 are -- are upcoming and that -- and that are --  
9 are scheduled to be paid.

10 Q. And would those obligations that are  
11 upcoming and scheduled to be paid prior to 2020  
12 have incurred the annual payment on that  
13 NexPoint \$30 million note?

14 MS. DANDENEAU: Objection to form.

15 MS. DEITSCH-PEREZ: Davor, I think  
16 you misspoke. You might want to just  
17 repeat the question.

18 Q. Okay. Let me repeat the question,  
19 sir.

20 Prior to 2020, those services that  
21 you just described, would that -- on behalf of  
22 the debtor, would that have included NexPoint's  
23 payments on the \$30 million note?

24 A. Yes.

25 Q. So someone at the debtor in treasury



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2 or accounting would have sent some schedule or  
3 a reminder that a payment would be coming due  
4 in the future. Is that generally the practice?

5 A. Yes, we would -- you know, again, I  
6 didn't -- I didn't micromanage the teams, but  
7 we had a -- a corporate accounting calendar  
8 that we use as kind of a tickler file to keep  
9 track of payments.

10 I actually, you know, don't know how  
11 actively they're using that in -- in prior to  
12 2020, but it was actively used at some point.

13 We did look at NexPoint cash  
14 periodically and cash for the other advisors as  
15 well and payments. You know, we -- payments  
16 like this would have appeared in our cash  
17 projections, in the advisor's cash projections.

18 And, again, as like I said earlier,  
19 they would have appeared there, so there would  
20 be time to plan for making any of these  
21 payments.

22 Q. And based on your experience, would  
23 it have been reasonable for NexPoint to rely on  
24 the debtors' employees to inform NexPoint of an  
25 upcoming payment due on the \$30 million

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2 promissory note?

3 MR. MORRIS: Objection to form of  
4 the question.

5 MS. DANDENEAU: Objection to form.

6 A. Yes. Yes, they did. I mean, but I  
7 mean, but I don't think these -- these notes  
8 were any secret to anybody.

9 Q. I understand, and I'm not suggesting  
10 otherwise.

11 MR. RUKAVINA: Please pull up Alpha  
12 2, Mr. Nguyen.

13 (Exhibit A2 marked.)

14 Q. Now, this document is similar to the  
15 ones we've seen before as of December 31, 2020,  
16 and I don't see under NTA anything there for  
17 paying the promissory note to Highland.

18 Do you see anything like that?

19 A. I do not.

20 MR. RUKAVINA: You can pull that --  
21 that exhibit down, Mr. Nguyen.

22 Q. You are aware, of course, by now  
23 that, in fact, NexPoint failed to make the  
24 payment due December 31, 2020, are you not?

25 A. I am aware, and yes, I do understand

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2 it.

3 Q. Were you aware that Highland  
4 accelerated that \$30 million promissory note?

5 A. I am aware.

6 Q. Were you aware of that acceleration  
7 at the time that it occurred?

8 A. I don't remember specifically.

9 Q. Do you recall whether anyone asked  
10 you -- prior to the acceleration, anyone asked  
11 you at Highland, what Highland should do with  
12 respect to the missed payment?

13 A. Did anyone ask me what Highland  
14 should do about the missed payment?

15 Q. Yes, before acceleration.

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. I mean, what -- what I recall is  
19 there was the -- sorry, are you asking me --

20 MS. DANDENEAU: Why don't you just  
21 repeat the question, Mr. Rukavina.

22 Q. Let me try again, Mr. Waterhouse,  
23 let me try again.

24 I am saying you're the CFO of  
25 someone, in this case, Highland, and the

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2 borrower failed to make the required payment.

3 Are you with me so far?

4 A. I am.

5 Q. Did anyone then ask you, what should  
6 we do with respect to our rights against the  
7 borrower that missed the payment?

8 A. Not that I recall.

9 Q. Did you play a role in the decision  
10 to accelerate that \$30 million promissory note?

11 A. I did not.

12 Q. Do you recall whether Mr. Seery ever  
13 asked you before the acceleration as to whether  
14 he should accelerate the note?

15 A. I don't recall.

16 Q. And you don't recall when you  
17 learned of the acceleration itself?

18 MR. MORRIS: Objection to the form  
19 of that question.

20 A. It was -- it was sometime in  
21 early -- in early 2021. I don't remember  
22 specifically.

23 Q. But do you recall whether it was  
24 after the acceleration had already been  
25 transmitted?

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2 MS. DANDENEAU: Objection to the  
3 form of the question.

4 A. I don't recall.

5 Q. Do you recall in early to mid  
6 January of 2021, after the default, discussing  
7 the default with Mr. Dondero?

8 A. I do recall discussing with  
9 Mr. Dondero after December 31, 2020?

10 Q. Yes, the fact of the default.

11 A. I don't recall.

12 MR. RUKAVINA: Let's pull up my  
13 Exhibit 6, Alpha 6.

14 (Exhibit A6 marked.)

15 MR. RUKAVINA: And, Mr. Nguyen, if  
16 you will please scroll down.

17 Q. This email chain begins with you  
18 writing to Ms. Hendrix on January the 12th:  
19 NexPoint note to HCMLP.

20 Do you see that, sir?

21 A. I do.

22 Q. Were you discussing this same  
23 \$30 million note we're talking about right now  
24 with Ms. Hendrix?

25 A. Yes.

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2 Q. Okay. Do you recall what prompted  
3 you to send that email to her?

4 A. Yes, I had -- I had a conversation  
5 with Jim.

6 Q. Okay. And what -- what did you  
7 discuss with Jim that led to this email chain?

8 A. He -- he called me and he said he  
9 wanted to make payment on the NexPoint note,  
10 and I didn't -- I didn't know the -- the amount  
11 offhand, so I reached out to Kristin and got  
12 the details and relayed that to him.

13 Q. And you see you sent that email to  
14 her at 11:15 a.m. Does that help you remember  
15 when you had this discussion with Mr. Dondero?  
16 In other words, was it that morning or the day  
17 before, or can you -- can you --

18 A. No, it was -- it was that morning.

19 Q. And do you recall how you had that  
20 conversation with him?

21 MR. MORRIS: Objection to the form  
22 of the question.

23 Q. By telephone, by email, in-person?

24 A. Yeah, he -- he called me. I was at  
25 home. We were working from home here in

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2 December of 2020. He called me from home. He  
3 said he was in court. He wanted to -- he asked  
4 about, you know, making payment on the note and  
5 the amount, and so I didn't have those numbers  
6 in front of me, so I said I would get back to  
7 him. I wanted all the details, so here is  
8 this -- so I reached out to Kristin.

9 Q. And then she gave you that  
10 \$1,406,000 figure?

11 MR. RUKAVINA: Mr. Nguyen, if you  
12 will scroll up, please.

13 A. Yes. Yeah, she -- the \$1,406,112.

14 Q. And do you recall whether you  
15 conveyed that amount to Mr. Dondero?

16 A. Yes. I -- I called him back and  
17 gave him -- gave him this amount.

18 Q. Are you aware of whether NexPoint,  
19 in fact, then made that 1 million 406 and  
20 change payment?

21 A. Yes, they did.

22 Q. Did you discuss with Mr. Dondero at  
23 that time, either the first conference or the  
24 second conference that day -- strike that.

25 When you conveyed the number to

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Mr. Dondero, was -- was it also on January 12th?

A. Sorry, when I conveyed the \$1.4 million number?

Q. Yes.

A. Yes, yes, it was that -- it was --

Q. So you had --

A. It was that point.

Q. Well, to the best of your recollection, you had a conference with Mr. Dondero by the telephone in the morning, and then another conference with him by telephone after 11:40 a.m. that morning?

A. Yeah, I can't remember -- yeah, it was either that morning or it could have been, you know, early afternoon, but again, I remember calling him back, relaying this information to him, and he said, okay, pay -- you know, make -- make this payment.

Q. And during either of those two calls, did you tell Mr. Dondero anything to the effect that making those -- I'm sorry, making that payment would not de-accelerate the promissory note?



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2 A. No.

3 Q. Did you tell him anything to the  
4 effect that making that payment would not cure  
5 the default?

6 A. No.

7 Q. Did you discuss that in any way with  
8 him?

9 A. No, I did not.

10 Q. Did he say why he wanted to have  
11 that \$1.4 million payment made?

12 MR. MORRIS: Objection to the form  
13 of the question.

14 A. He -- he -- he didn't go into  
15 specifics.

16 Q. Did he say anything to you to the  
17 effect that if NexPoint makes that payment,  
18 then the note will be de-accelerated?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. I don't recall.

22 MR. RUKAVINA: You can put this one  
23 down, Mr. Nguyen.

24 Q. And, again, when you say you don't  
25 recall, you mean you don't remember right now

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2 either way; correct?

3 A. Yeah, I don't remember. I don't  
4 remember us discussing that.

5 Q. Now -- and we're almost done, I  
6 promise. I'm just going to -- I don't know how  
7 to ask this question, so I'm just going to try  
8 to do my best.

9 Prior to the default on December 31,  
10 2020, did Mr. Seery ever tell you any words to  
11 the effect that you or someone at Highland  
12 should ensure that NexPoint doesn't make its  
13 payment?

14 A. No.

15 Q. Did you have any hint or any belief  
16 that anyone at NexPoint -- I'm sorry, strike  
17 that.

18 Did you have any reason to believe  
19 that anyone with Highland was actively trying  
20 to get NexPoint to make that default by not  
21 paying on December 31?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Are you asking, did any Highland  
25 employees actively work to make -- to

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2 somehow --

3 Q. Yes. Let me take a step back. Let  
4 me take a step back.

5 So you are aware now that as a  
6 result of that default, what was still some  
7 25-year note was accelerated and became  
8 immediately due. You are aware of that now;  
9 right?

10 A. Yes.

11 Q. And can you see how someone at  
12 Highland might actually have been pleased with  
13 that development?

14 MR. MORRIS: Objection to the form.

15 Q. Not that they were --- not that they  
16 were pleased, but you can see how someone at  
17 Highland might have been pleased with that  
18 development?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 MS. DANDENEAU: Object to form.

22 A. I don't know how they would have  
23 reacted to that.

24 Q. Okay. But you're not -- you're not  
25 aware of any instructions or any actions being

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2 given or taken at Highland by Mr. Seery, the  
3 independent board, DSI, that -- that would have  
4 basically led Highland to ensure that NexPoint  
5 would fail to make that payment?

6 A. I'm not aware.

7 Q. In other words, there wasn't a trick  
8 or a settlement; right?

9 MS. DEITSCH-PEREZ: Objection to  
10 form.

11 MS. DANDENEAU: Object to form.

12 MR. MORRIS: Object to form.

13 A. I'm not aware.

14 Look, I'm not aware. I'm not in  
15 every conversation. I mean, and I'm just --  
16 again, I'm sitting at home. It is the end of  
17 the year. Again, I'm not aware.

18 Q. That is a perfectly legitimate  
19 answer. I don't know why -- why you think  
20 otherwise.

21 Okay. Just give me one second to  
22 compose my thoughts.

23 MS. DEITSCH-PEREZ: While you're  
24 taking your one second, why don't we take  
25 three minutes. I will be right back.

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2 VIDEOGRAPHER: Do we want to go off  
3 the record?

4 MR. RUKAVINA: Yes.

5 VIDEOGRAPHER: All right. We're  
6 going off the record at 6:27 p.m.

7 (Recess taken 6:27 p.m. to 6:30 p.m.)

8 VIDEOGRAPHER: We are back on the  
9 record at 6:30 p.m.

10 MR. HORN: Is Deb back?

11 MS. DANDENEAU: Are you asking about  
12 me? I'm here.

13 MR. HORN: Oh, okay. I don't see  
14 you, sorry.

15 Q. Actually, yeah, Mr. Waterhouse, so  
16 when you had --

17 MS. DANDENEAU: Are you asking about  
18 Deb Dandeneau or Deborah? I mean, there  
19 are a lot -- as we talked about, a lot of  
20 Debs. I'm here.

21 MS. DEITSCH-PEREZ: I'm here.

22 MR. HORN: Yes, I was asking about  
23 DDP.

24 MS. DEITSCH-PEREZ: Oh, DDP is here.

25 MR. HORN: Okay. Here we go. I'm

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2 going back on mute.

3 MS. DANDENEAU: Get the right  
4 nomenclature.

5 Q. Mr. Waterhouse, on January 12th,  
6 2021, when you had those talks with Mr. Dondero  
7 about the \$1.4 million payment, did you have a  
8 communication or a conversation with Mr. Seery  
9 about that payment after January 12th, 2021?

10 A. I don't recall.

11 Q. Well, in response to Mr. Dondero  
12 reaching out to you, do you recall on that day,  
13 January 12th, talking to Mr. Seery or anyone at  
14 Highland other than the email chain we just saw  
15 about Mr. Dondero's call with you?

16 A. Did I talk to -- I spoke with  
17 Kristin -- I don't know if I spoke to her. I  
18 likely spoke to Kristin Hendrix because we had  
19 to get the wire on NexPoint's behalf to make  
20 the payment to Highland.

21 Q. So it is true, then, that -- that  
22 employees of the debtor did actually cause that  
23 payment to be made when it was made after  
24 January 12th?

25 A. Yes, I mean, we -- we -- as I

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2 testified earlier, we provided that accounting  
3 finance treasury function as -- under the  
4 shared services agreement. And so once I  
5 got the -- I talked to Jim, got the approval to  
6 make this payment, we have to then make the  
7 payment, or the team does, and so the payment  
8 was made.

9 Q. Okay. But -- okay. And -- and  
10 sitting here right now, after Jim called you,  
11 you don't remember talking to anyone other than  
12 the -- the couple of people you mentioned,  
13 talking to anyone about something to the effect  
14 that, hey, Jim wants to make this payment now?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I don't -- I don't recall.

18 Q. And does that include legal counsel?

19 Without going into any detail, on  
20 January 12th or before that payment was made,  
21 did you consult with legal counsel about  
22 anything having to do with the \$1.4 million  
23 payment?

24 A. I don't recall.

25 Q. Okay. Thank you, sir, for your

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2 time.

3 MR. RUKAVINA: Pass the witness.

4 MR. MORRIS: I just have a few  
5 questions, if I may.

6 MS. DEITSCH-PEREZ: Don't you go at  
7 the end?

8 MR. MORRIS: Oh, I apologize. He is  
9 your witness. I'm surprised you want to  
10 ask him questions, but go right ahead.

11 MS. DEITSCH-PEREZ: Just have a  
12 couple of things.

13 MR. RUKAVINA: And I will just  
14 object to that, that he's our witness.  
15 That's not --

16 MR. MORRIS: I'm not talking to you.  
17 I'm not talking to you.

18 MS. DANDENEAU: Also, Mr. Morris, it  
19 is -- it is --

20 MS. DEITSCH-PEREZ: He is not my  
21 witness. He's been subpoenaed by you.  
22 Okay?

23 That is no offense, Mr. Waterhouse,  
24 I'm -- I'm not -- okay. Anyway.

25 EXAMINATION



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2 BY MS. DEITSCH-PEREZ:

3 Q. Good evening. I'm very sorry to be  
4 going last and I know you have had a long and  
5 taxing day, so I thank you for indulging me.

6 The kinds of services that you  
7 describe that the -- that Highland provided for  
8 NexPoint, did Highland also provide similar  
9 services to that to HCRE and HCMS?

10 A. Yes.

11 MR. MORRIS: Objection to the form  
12 of the question.

13 Q. What kind of services did Highland  
14 provide to HCRE and HCMS?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 MS. DEITSCH-PEREZ: What is your  
18 objection, John?

19 MR. MORRIS: It is vague and  
20 ambiguous. Unlike the advisors and  
21 NexPoint, they actually had shared services  
22 agreements.

23 MS. DEITSCH-PEREZ: I got -- I  
24 understand your objection. That is fine.

25 Q. Let's take them one at a time.

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2 What kinds of services did Highland  
3 provide to HCRE?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. HCMS, Highland employees provided  
7 accounting services, treasury management  
8 services, potentially legal services. I  
9 don't -- but I wouldn't have been directly  
10 involved in that. But as far as the teams that  
11 I manage, it was accounting, treasury, things  
12 of that nature.

13 Q. Okay. And that was for HCM, LLP --

14 A. And -- and, sorry, it would also be  
15 any asset valuation if needed as well.

16 Q. Okay. We went back and forth on  
17 each other and I apologize, so just to clarify.

18 You were talking about the services  
19 that Highland Capital Management provided to  
20 HCMS; is that right?

21 A. HCMS. So, again, yes. And  
22 accounting, treasury, valuation, and also tax  
23 services too.

24 Q. Okay.

25 A. Tax services. Look, I'm expanding

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2 this, their HR services as well.

3 Q. Okay. And did that include bill  
4 paying?

5 MR. MORRIS: Objection to the form  
6 of the question.

7 Q. Did the services that HCM provided  
8 to HCMS include bill paying?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. Yes.

12 Q. And did the services that HCMLP  
13 provided to HCMS include scheduling upcoming  
14 bills?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. Yes.

18 Q. And did HCMLP regularly pay -- cause  
19 to be paid the payments on loans HCMS had from  
20 HCMLP?

21 MR. MORRIS: Objection to the form  
22 of the question.

23 A. Yes.

24 Q. Typically -- if there is a  
25 typically, how far in advance of due dates did

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2 HCMLP cause HCMS to pay its bills?

3 MR. MORRIS: Objection to the form  
4 of the question.

5 A. I mean, it -- it -- it depend -- it  
6 depended on the nature of the payment and the  
7 vendor, but, you know, if there were -- if  
8 there were larger scheduled payments, you know,  
9 I would like to give at least 30 days notice.

10 And that is -- that is kind of my  
11 rule of thumb so no one is surprised.

12 Q. Okay. And was it generally HCMLP's  
13 practice to timely pay HCMS' bills?

14 MR. MORRIS: Objection to the form  
15 of the question.

16 A. It -- it -- it -- that depended on  
17 the nature of the payment.

18 Q. Okay. And can you explain what you  
19 mean by that?

20 A. Yeah, I mean if -- if it was -- I  
21 mean -- if there was some professional fees  
22 that weren't -- you know, they were due but  
23 they weren't urgent, those fees may not be paid  
24 as timely as others that have a due date or --  
25 or things like that.

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2 Q. Okay. Are loan payments the kinds  
3 of thing that HCMLP would pay on time because  
4 of potential consequences of not paying on  
5 time?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. Yes. As I testified earlier, we  
9 would want to give, you know, notice on -- on  
10 -- on larger payments and -- and things of that  
11 nature so we didn't miss due dates.

12 Q. Okay. And over the course of time,  
13 did HCMLP generally pay HCMS' loan payments in  
14 a timely fashion?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I can't remember specifically, but  
18 generally, yes.

19 Q. Okay. Now, did HCMLP provide  
20 similar services to HCRE that you have  
21 described it provided to HCMS?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Yes, but I don't think it -- it  
25 provided -- I don't think it provided HR

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2 services.

3 Q. Can you describe the accounting and  
4 treasury services that HCMLP provided for HCRE?

5 A. Yeah, it -- it would provide  
6 bookkeeping services on a -- on a periodic  
7 basis. It would make payments, you know, as  
8 needed.

9 Q. Okay. So did it provide --

10 A. And -- and I believe it -- it -- it  
11 provided tax services as well.

12 Q. Okay. And so did it provide the  
13 same kind of bill -- did HCMLP provide the same  
14 kind of bill-paying services for HCRE that it  
15 provided for HCMS and NexPoint?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. Yes.

19 Q. And over the course of time, did  
20 HCMLP generally cause to be made the loan  
21 payments that HCRE owed to HCMLP?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Yes.

25 Q. Did HCMLP make loan payment -- the

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2 loan payment that was due from HCMS to HCMLP in  
3 December of 2020?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. I don't believe that payment --  
7 payment was made.

8 Q. Okay. And when HCMLP caused HCMS in  
9 the past to make loan payments, whose money did  
10 it use to make those payments?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. It was the -- the money in HCMS's  
14 operating account would be made to that --  
15 those moneys would be used to make payment to  
16 Highland Capital Management.

17 Q. Okay. And Highland -- is it correct  
18 that Highland Capital Management personnel had  
19 the access to HCMS's accounts to be able to  
20 cause such payments to be made?

21 A. Yes, Highland personnel had access  
22 to those accounts.

23 Q. Okay. And so now for HCRE, whose  
24 money was used when HCMLP caused HCRE  
25 payments -- loan payments to Highland to be

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2 made?

3 MR. MORRIS: Objection to the form  
4 of the question.

5 A. It was -- it was cash in HCRE's bank  
6 account that would be used to make payments to  
7 Highland Capital Management.

8 Q. Okay. And so did Highland Capital  
9 Management have access to HCRE's funds in order  
10 to be able to make such payments?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. Personnel at Highland Capital  
14 Management had access to HCRE's bank account to  
15 effectuate the payments.

16 Q. Okay. And was the payment due from  
17 HCRE to HCMLP due in December of 2020 made?

18 A. It --

19 Q. In December of 2020.

20 A. It was not.

21 Q. Okay. And was there money in HCRE's  
22 account that would have enabled the payment to  
23 be made had HCM personnel attempted to make the  
24 payment?

25 MR. MORRIS: Objection to the form



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2 of the question.

3 A. I -- I don't recall.

4 Q. Do you have any reason to believe  
5 that either HCRE or HCMS simply didn't have the  
6 funds on hand to make the December 2020  
7 payments?

8 A. I don't know.

9 Q. I guess I'm asking, do you have any  
10 reason to believe that they didn't have the  
11 funds?

12 A. We managed cash for so many  
13 different entities and funds, and I don't  
14 recall, you know, where the cash position was  
15 for HCRE and HCMS at 12/31/2020.

16 Q. Okay.

17 A. I just don't recall, and I don't --  
18 and I don't remember what the loan payment  
19 obligations were from HCRE to Highland, and  
20 from HCMS to Highland. I don't recall. I  
21 don't recall, I mean...

22 Q. Let me come at it a different way.  
23 Were the -- were the payments that would  
24 otherwise have been due in December of 2020  
25 made in January of 2021 for HCMS and HCRE?

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2 A. I believe the HCRE payment was made  
3 in January of 2021. I don't recall any  
4 payments being made from HCMS to Highland.

5 Q. If it -- how is it the HCRE payment  
6 came to be made? Why did you make it -- why  
7 did HCM make the payment in January of 2021?

8 A. Jim -- Jim called me and instructed  
9 me to -- to make the payment on behalf of HCRE,  
10 Jim Dondero -- Jim Dondero.

11 Q. Did he seem upset that -- that the  
12 payment had not been made?

13 A. Yeah. On the note that was, you  
14 know, that was the term note, yes, he -- he was  
15 displeased that the -- that the payment had not  
16 been made by year-end.

17 Q. Okay. And did you make the -- cause  
18 the payment to be made as -- as requested?

19 A. Yes.

20 Q. And did anyone else from HCM  
21 participate with you in causing the payment to  
22 be made to -- on the HCRE loan?

23 A. Yes. It would have been Kristin  
24 Hendrix. I -- again, I don't -- as I testified  
25 earlier, I'm not an officer of HCRE. I don't

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2 believe I'm an authorized signer. So I  
3 can't -- other personnel have to make payment  
4 from HCRE to -- to -- to -- to Highland.

5 Q. Okay. And in the conversation  
6 that -- that you had with Mr. Dondero when he  
7 requested the payment to be made, did you say  
8 to him words to the effect, Jim, this loan is  
9 going to stay in default, what are you making  
10 the payment for, anything like that?

11 A. No.

12 Q. In fact, did you have the impression  
13 from him that he thought that the loan would  
14 be -- the default would be cured by making the  
15 payment?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. Did I get the impression from Jim  
19 Dondero that the loan would be cured if the  
20 payment from HCRE --

21 Q. Yeah, if that is what he thought.

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. I didn't get any impression from him  
25 on that at the time.

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2 Q. Do you know whether there was an  
3 HCMS term loan that had a payment due in  
4 December of 2020?

5 A. I don't recall.

6 Q. Okay. And so the reason you don't  
7 recall whether or not there was a payment in  
8 January of 2021 is because you just don't  
9 remember whether there was such a loan at all?

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. I don't remember. There is -- there  
13 is so many notes, and I mean, demands, and I  
14 don't -- I don't remember. It's a lot to keep  
15 track in your head.

16 Q. I understand, and -- and I hear your  
17 frustration when you have explained that the  
18 debtor has your documents and you don't, and so  
19 I fully appreciate it, and this is no knock on  
20 you. It's a knock on somebody else on this  
21 call.

22 MR. MORRIS: I move to strike. That  
23 was pretty obnoxious, but go ahead.

24 Q. Okay. But so, Mr. Waterhouse, if --  
25 if a payment on the HCMS loan was made in

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2 January of 2021, do you think it was part of  
3 the same conversation where Jim Dondero said,  
4 hey, why didn't that get paid, please make  
5 that -- get that payment done?

6 MR. MORRIS: I object to the form of  
7 the question.

8 A. Yes. Likely it would have been -- I  
9 mean, again, I don't recall a payment being  
10 made, but, you know, again, I don't remember  
11 everything.

12 Q. Okay. Did -- at the time you were  
13 communicating with Kristin Hendrix about the  
14 payment being made, whichever payments were  
15 made in January, did she say anything to you  
16 about the payments not curing the loan  
17 defaults?

18 A. No.

19 Q. Okay. All right. So I'm going to  
20 take you back to very early in the deposition  
21 when Mr. Morris was asking you about the --  
22 the -- the -- the agreement with respect to  
23 the -- the forgiveness element of the loans, so  
24 that is just to orient you.

25 Do you remember that there was a

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2 time that you and Mr. Dondero were  
3 communicating about potential means of  
4 resolving the Highland bankruptcy by what was  
5 colloquially referred to as a pot plan?

6 A. Yes.

7 Q. Okay. And can you tell me generally  
8 when that was?

9 A. Like mid -- mid 2020, sometime in  
10 2020, mid 2020.

11 Q. Okay. And did the process of trying  
12 to figure out what the numbers should be  
13 involve looking at what one should pay for the  
14 Highland assets?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. Yes.

18 Q. Okay. And did there come a time  
19 when you were proposing some potential numbers  
20 and Mr. Dondero said something to you like,  
21 well, why are you including payment for the  
22 related party notes, those, you know, were  
23 likely to be forgiven as part of my deferred  
24 executive compensation?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. Yes, we did have that conversation.

4 Q. Okay. Was that conversation in  
5 connection with trying to figure out the right  
6 numbers for a pot plan?

7 A. Yeah. I mean, it was -- it was -- I  
8 mean, Jim -- Jim would ask for, you know,  
9 most -- most recent asset values, you know, for  
10 Highland, and -- and myself and the team  
11 provided those to him, so it was in that  
12 context.

13 Q. Okay. And does that refresh your  
14 recollection that these communications were in  
15 2020 rather than 2021?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. The -- the -- the executive  
19 compensation discussions were definitely in  
20 2020.

21 Q. Okay. Now, did you ever make  
22 proposals that took into account Jim's comment  
23 that the notes were likely to end up forgiven  
24 as part of his compensation?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. Yes, we -- the team and myself put  
4 together, you know, asset summaries of Highland  
5 at various times for all the assets of  
6 Highland, and not including the notes.

7 Q. Okay. And were those presentations  
8 communicated to -- to Mr. Seery?

9 A. No. Well, look, I didn't tell -- I  
10 didn't tell Mr. Seery. I don't know what  
11 Mr. Dondero did with the information.

12 Q. Okay.

13 A. I did not have conversations with  
14 Mr. Seery.

15 Q. Okay. Do you know who saw the  
16 presentations that you put together that didn't  
17 include the value of the related party notes?

18 A. We're talking presentations -- these  
19 are -- these are Excel spreadsheets?

20 Q. Uh-huh.

21 A. I don't know who -- these were given  
22 to -- to Jim Dondero. I don't know what was  
23 done with them after that.

24 Q. Okay. You also mentioned earlier  
25 that sometime during your tenure at Highland



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2 you knew of the practice of giving forgivable  
3 loans to executives.

4 MR. MORRIS: Objection to the form  
5 of the question.

6 Q. Can you -- can you tell me what you  
7 recall about that practice?

8 MR. MORRIS: Objection to the form  
9 of the question.

10 A. Yes, so there were -- there were --  
11 during my tenure at Highland, there were loans  
12 or -- given to employees that were later  
13 forgiven at a future date and time.

14 Q. Okay. And when the loans were  
15 given, did the notes, to your recollection, say  
16 anything about the potential forgiveness term?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. When you say "did the notes," did  
20 the promissory notes detail the forgiveness?

21 Q. Yes.

22 A. Not that I recall.

23 Q. And until such time as whatever was  
24 to trigger the forgiveness occurred, were the  
25 notes bona fide notes as far as you were

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2 concerned?

3 MR. MORRIS: Objection to the form

4 of the question.

5 A. Yes, similar to -- yes.

6 Q. Okay. You were going to say similar  
7 to what?

8 A. Mr. Morris earlier today showed  
9 notes of the financial statements about various  
10 affiliate loans. I -- I -- I do recall these  
11 notes because I -- at that time personally  
12 worked on the -- the financial statements of  
13 Highland. That was, you know, in my role as a  
14 corporate accountant.

15 And there were -- those loans  
16 were -- to the partners were detailed in the  
17 notes to the financial statements, similar to  
18 what we went through earlier today in the prior  
19 testimony about what we saw with Highland  
20 and -- and -- and the -- and HCMFA.

21 Q. Is it fair to say that on Highland's  
22 balance sheet there were any number of assets  
23 that the value of which could be affected by  
24 subsequent events?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. Yes. I mean, yes, that -- there  
4 are. And that is -- yes.

5 Q. Okay. And is it typical accounting  
6 practice that until there is some certainty  
7 about those potential future events, that asset  
8 value listed on -- on the books doesn't take  
9 into account those potential future events?

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. Yeah, if those -- yes. If -- if  
13 those future events, you know, at the time of  
14 issuance are not known or knowable, like I  
15 discussed earlier with, like, market practice,  
16 asset dislocation, or, you know, I mean, things  
17 like that, you -- I mean, it -- it could affect  
18 its fair value --

19 Q. Okay.

20 A. -- in the future.

21 Q. And am I correct you wouldn't feel  
22 compelled to footnote in every possible change  
23 in -- in an asset when those possibilities are  
24 still remote?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. The accounting standard is you have  
4 to estimate to the best -- you know, to -- to  
5 the best of your ability, the fair value of an  
6 asset as of the balance sheet date under --  
7 under GAAP.

8 Q. Did -- strike that.

9 Okay. Give me a minute. I'm  
10 close -- I'm close to done. Let me just go off  
11 and look at my notes for a second. So take two  
12 minutes.

13 VIDEOGRAPHER: We're going off the  
14 record at 7:02 p.m.

15 (Recess taken 7:02 p.m. to 7:03 p.m.)

16 VIDEOGRAPHER: We are back on the  
17 record at 7:03 p.m.

18 Q. Mr. Waterhouse, is it generally your  
19 understanding that people you work with now  
20 have been asking the debtor for full and  
21 unfettered access to their own former files?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Yes, I am -- I am generally aware.

25 Q. Okay. And do you think you could

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2 have been better prepared for this deposition  
3 if the debtor had complied with those requests?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. I -- I -- I most certainly -- yes.  
7 I mean, again, these are multiple years,  
8 multiple years ago, lots and lots of  
9 transactions.

10 You know, we asked about NAV errors  
11 and, you know, things like that and these  
12 are -- it would make this process a lot more --  
13 a lot easier and if we had -- if we had access  
14 to that.

15 Q. Okay. And has the debtor -- is the  
16 debtor suing you right now?

17 A. Yes.

18 Q. And is the debtor trying to renege  
19 on deals that it had previously made with you?

20 MR. MORRIS: Objection to the form  
21 of the question.

22 A. Sorry, I need to -- it is my  
23 understanding that the litigation trust is  
24 suing me. And not being a lawyer, I don't  
25 know -- is that the debtor?

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2 Is that -- I don't know the  
3 relationship. So, again, I'm not the lawyers.  
4 I've said many times. But my understanding is  
5 the litigation trust is suing me. I could be  
6 wrong there. I don't know.

7 Q. Okay. I understand.

8 Someone with some connection to the  
9 Highland debtor has brought a claim against  
10 you; is that fair?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. Yes.

14 Q. Okay. And is there also some motion  
15 practice in the bankruptcy where the debtor or  
16 someone associated with the debtor is  
17 attempting to undo something that was  
18 previously resolved with you?

19 A. Yes.

20 Q. And so in one action somebody is  
21 associated with the debtors trying to --  
22 threatening you with trying to take money from  
23 you, and then in the other -- and trying to --  
24 and in the other they are threatening not to  
25 pay you things that had previously been agreed;

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2 is that correct?

3 MR. MORRIS: Objection to the form  
4 of the question.

5 A. I want to be -- yes, I -- there  
6 is -- I'm being sued, again, on -- on something  
7 that was agreed to with Mr. Seery and myself.  
8 I don't -- I don't -- I don't own that claim.

9 Q. Okay.

10 A. To be transparent, I don't own that  
11 claim. So it is not my personal property.

12 Q. Okay.

13 A. And -- and being the nonlawyer, I  
14 don't know how I can get sued for something  
15 that I don't owe or, like, I don't own  
16 anything. I'm not the lawyer. But, I mean, if  
17 that is -- if I'm understanding the facts  
18 correctly.

19 Q. Okay. And the lawsuit that was  
20 filed that names you, that was just filed  
21 this -- this past week; is that right?

22 MS. DANDENEAU: Ms. Deitsch-Perez, I  
23 do want to interrupt at this point because  
24 just as I told Mr. Morris, that this is a  
25 deposition about the noticed litigation.

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2 I really don't want to go -- go  
3 afield --

4 MS. DEITSCH-PEREZ: Yeah.

5 MS. DANDENEAU: -- and open up a  
6 whole new line of inquiry about the lawsuit  
7 or the -- the motion and the bankruptcy  
8 court. We will be here all night.

9 MS. DEITSCH-PEREZ: And I  
10 understand.

11 Q. My -- my point is: Do you feel  
12 like -- like there is some effort by these  
13 parties related to the debtor to intimidate  
14 you -- not that you -- I'm not saying you are  
15 or you aren't.

16 But do you feel like there is some  
17 effort to intimidate you and maybe an effort to  
18 deter you from being as prepared as you might  
19 be in this deposition?

20 MR. MORRIS: Objection to the form  
21 of the question.

22 A. I was -- I was surprised by the  
23 lawsuit, by me being named, because, again, I  
24 don't own the asset and things like that.  
25 Yeah, I just -- I want to move forward with my



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2 life at Skyview.

3 MS. DEITSCH-PEREZ: Thank you.

4 THE WITNESS: Thank you.

5 FURTHER EXAMINATION

6 BY MR. MORRIS:

7 Q. If I may, I just have a few  
8 questions.

9 Mr. Waterhouse, we saw a number of  
10 documents that Mr. Rukavina put up on the  
11 screen where Ms. Hendrix would send you a  
12 schedule of payments that were due on behalf of  
13 certain Highland affiliates.

14 Do you remember that?

15 A. Yes.

16 Q. And in each instance she asked for  
17 your approval to make the payments; is that  
18 right?

19 A. Yes, she did.

20 Q. And was that the -- was that the  
21 practice in the second half of 2020 whereby  
22 Ms. Hendrix would prepare a list of payments  
23 that were due on behalf of Highland associates  
24 and ask for approval?

25 A. Yes.

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2 Q. And I think you said that there was  
3 a -- a --

4 A. It was -- I think I testified to  
5 this earlier when we talked about procedures  
6 and policy, you know, again, I want to be  
7 informed of -- of -- of -- of -- of any  
8 payments that are going out. I want to be made  
9 aware of these payments, and that was just a  
10 general policy, not just for 2020.

11 Q. Okay. So it went beyond 2020?

12 A. Yes.

13 Q. Is that right?

14 A. Yes.

15 Q. Okay. And the corporate accounting  
16 group would prepare a calendar that would set  
17 forth all of the payments that were anticipated  
18 in the -- in the three weeks ahead; is that  
19 right?

20 A. I -- like I testified earlier, we  
21 had a corporate calendar that was set up, you  
22 know, to -- to provide reminders or, you know,  
23 of anything of any nature, whether it is  
24 payments or -- or financial statements or, you  
25 know, whatever it is, you know, to meet

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2 deadlines.

3 I don't know how, as I testified  
4 earlier, how much they were using that  
5 calendar.

6 Q. Okay. But -- but you did get notice  
7 and a request to approve the payments that were  
8 coming due on behalf of Highland's affiliates.  
9 Do I have that right?

10 MS. DANDENEAU: Objection to form.

11 A. I mean, generally, yes. I mean, you  
12 know, as we saw with these emails, generally, I  
13 mean, did that encompass everything, no.

14 Q. Okay. Do you know why the  
15 payment -- do you know why there was no payment  
16 made by NexPoint at the end of 2020?

17 A. Yes. There was -- there was -- we  
18 talked about these agreements between the  
19 advisors and Highland, the shared services and  
20 the cost reimbursement agreement.

21 And in late 2020, there were  
22 overpayments, large overpayments that had been  
23 made over the years on these agreements, and it  
24 was my understanding that the advisors were --  
25 were talking with -- like Jim Seery and others

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2 to offset any obligations that the advisors  
3 owed to Highland as offset to the overpayments  
4 on these agreements.

5 Q. Okay. Did you participate in any of  
6 those conversations?

7 A. I did not.

8 Q. Okay. Do you know -- do you recall  
9 that the -- at the end of November, the debtor  
10 did notice to the advisors of their intent to  
11 terminate the shared services agreements?

12 A. Like I testified earlier, there  
13 was -- the agreements weren't identical, from  
14 what I recall, and there is one that had a  
15 longer notice period, which I think had a  
16 60-day notice period. I don't recall which one  
17 that was, so not all of them were -- notice  
18 hadn't been given as of November 30th, for all  
19 of the agreements.

20 Q. Upon the receipt of the -- the  
21 termination notices that you recall, do you  
22 know if the advisors decided at that point not  
23 to make any further payments of any kind to  
24 Highland?

25 MR. RUKAVINA: Objection, form.

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2 A. No. The advisors -- the advisors  
3 had stopped making payments prior to that  
4 notice.

5 Q. Okay. And how do you know that the  
6 advisors stopped making -- making payments  
7 prior to the notice?

8 A. I had -- I had a conversation  
9 with -- with Jim Dondero.

10 Q. And did Mr. Dondero tell you that  
11 the advisors would no longer make payments to  
12 Highland?

13 MS. DEITSCH-PEREZ: Object to the  
14 form.

15 A. Yes, he -- he -- again, he said  
16 they -- they -- the advisors have overpaid on  
17 these agreements, to not make any future  
18 payments, and that there needs to be offsets,  
19 and they're working on getting offsets to these  
20 overpayment.

21 Q. Do you know if anybody ever  
22 instructed Highland's employees to make the  
23 payment that was due by NexPoint at the end of  
24 the year?

25 A. Did anyone instruct Highland's

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2 employees to make that payment?

3 Q. Correct.

4 A. Anyone -- not that I'm aware.

5 Q. Were any of Highland's employees  
6 authorized to make the payments on behalf of  
7 its affiliates -- withdrawn.

8 Was any of Highland's employees  
9 authorized to effectuate the payment on behalf  
10 of NexPoint that was due at the end of the year  
11 without getting approval from either you or  
12 Mr. Dondero?

13 A. They had the -- they had the ability  
14 to make the payment, but they didn't -- you  
15 know, that -- that payment needed to be  
16 approved.

17 Q. Okay. And it needed to be approved  
18 by you or Mr. Dondero; is that right?

19 A. I mean, I'm not going to make the  
20 unilateral decision.

21 Q. Is that a decision that you  
22 understood had to be made by Mr. Dondero?

23 A. Yes. Sitting back in December of  
24 2020, the -- that -- there was this off --  
25 offset negotiation that -- that was happening,

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2 so I mean, until those negotiations were  
3 resolved, you know, there wasn't any  
4 payments -- there weren't any payments.

5 Q. And -- and there were no payments  
6 until the negotiations were resolved because  
7 that was the directive that you received from  
8 Mr. Dondero; correct?

9 A. I don't think he said -- I mean, I  
10 think -- yeah, I mean -- I'm trying to recall  
11 the conversation. It was -- you know, there  
12 is -- there is these negotiations. There's --  
13 there needs to be these offsets. They're  
14 talking with the debtor. So, you know, until  
15 this is resolved, right, I mean, depending on  
16 how, whatever that resolution was, were we to  
17 take any action.

18 Q. Okay. How about with respect to  
19 HCMS, did HCMS have a term payment due at the  
20 end of the year?

21 A. Again, I don't -- I don't recall.

22 Q. Okay. You discussed briefly two  
23 payments that were made in January of 2021, one  
24 on behalf of NexPoint, and one on behalf of  
25 HCMS. Do I have that right?

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2 A. No. The two payments I recall were  
3 NexPoint and HCRE.

4 Q. Okay. And those two payments --  
5 thank you for the correction. And those two  
6 payments were made because Mr. Dondero  
7 authorized those payments to be made; correct?

8 A. Yes.

9 Q. And they hadn't been made before  
10 that because Mr. Dondero had not authorized  
11 them to be made?

12 MS. DEITSCH-PEREZ: Object to the  
13 form.

14 A. Yes, because of these negotiations.

15 Q. Okay. Just a couple of more  
16 questions.

17 Did anybody, to the best of your  
18 knowledge, on behalf of HCMFA, ever tell the  
19 SEC that HCMLP was responsible for the mistakes  
20 that were made on the TerreStar valuation?

21 A. Did anyone from Highland on HCMFA's  
22 behalf tell the SEC that Highland -- that  
23 Highland was responsible for there -- I just  
24 want to make sure --

25 Q. It was a little bit different, so



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2 let me try again.

3 A. These are very long questions, John.

4 I'm not trying to be --

5 Q. That is good. Do you know whether  
6 anybody -- do you know whether anybody on  
7 behalf of HCMS -- HCMFA ever told the SEC that  
8 Highland was the responsible party for the  
9 TerreStar valuation error?

10 A. Not that I'm aware.

11 Q. Okay. Did anybody on behalf of  
12 the -- on behalf of HCMFA ever tell the retail  
13 board that Highland was responsible for the  
14 TerreStar valuation error?

15 A. Not that I'm aware.

16 Q. Do you know if HCMFA made an  
17 insurance claim with respect to the damages  
18 that were incurred in relation to the TerreStar  
19 valuation error?

20 A. Yes.

21 Q. And do you know why they made that  
22 insurance claim?

23 A. Because there was an error. I  
24 mean --

25 Q. Was the insured's claim made -- was

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2 the insurance claim made under HCMFA's policy?

3 A. Yes.

4 Q. Did HCMFA at any time prior to the  
5 petition date -- withdrawn.

6 You were asked a couple of questions  
7 where -- where you said that Mr. Dondero told  
8 you that he was ascribing zero value to the  
9 notes as part of a pot plan because he believed  
10 that the notes were part of executive  
11 compensation.

12 Do I have that right?

13 MS. DEITSCH-PEREZ: Object to the  
14 form.

15 A. Yes.

16 Q. Okay. Have you ever heard that  
17 before the time that Mr. Dondero told you that  
18 in the conversation about the pot plan?

19 A. Had I heard that prior to my  
20 conversation with Mr. Dondero?

21 Q. Yes.

22 A. No, I had not heard that prior.

23 Q. Okay. And that was in the context  
24 of his formulation of the settlement proposal;  
25 is that right?

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2 A. I mean, generally, yes. You know,  
3 we were asked to provide asset values, right,  
4 and he was having settlement discussions.  
5 Again, I don't know who those went to  
6 ultimately. I don't recall.

7 MR. MORRIS: I have no further  
8 questions. Thank you very much for your  
9 patience. I apologize for the late hour.

10 MS. DEITSCH-PEREZ: John, you stay  
11 on about your email when --

12 MR. RUKAVINA: Hold on, I'm not  
13 done.

14 MS. DEITSCH-PEREZ: Oh, okay. Davor  
15 still has questions. Sorry. I was going  
16 to say both John and Davor, could you stay  
17 on afterwards just to talk about the  
18 requests.

19 FURTHER EXAMINATION

20 BY MR. RUKAVINA:

21 Q. Mr. Waterhouse, you were just now  
22 testifying about a discussion you had with  
23 Mr. Dondero where he said something like no  
24 more payments.

25 Do you remember that testimony?

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2 A. Yes.

3 Q. Okay. And was that late November or  
4 early December of 2020?

5 A. It was, I would say, first or second  
6 week of November.

7 Q. Okay. Do you recall whether --  
8 whenever you had that discussion, whether  
9 Mr. Dondero had already been fired by the  
10 debtor?

11 A. Yes, I -- I believe he was not an  
12 employee of the debtor anymore at that time.

13 Q. And when you were discussing this  
14 with Mr. Dondero and he said no more payments,  
15 you were discussing the two shared services  
16 agreements and employee reimbursement  
17 agreements we testified -- you testified about  
18 before; is that correct?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. That is correct.

22 Q. And had your office or you -- and we  
23 will talk at a future deposition about the  
24 administrative claim.

25 But had -- by that time that you

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2 talked to Mr. Dondero, had your office or you  
3 done any estimate of what the alleged  
4 overpayments were?

5 MR. MORRIS: Objection to the form  
6 of the question.

7 A. Yes, we had -- there was a -- there  
8 was a detailed analysis that was put together  
9 by David Klos at the time.

10 Q. And do you recall just generally  
11 what the total amount for both advisors of the  
12 overpayments was?

13 A. It was in excess of \$10 million.

14 Q. Was it in excess of \$14 million?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I -- I remember it was an  
18 eight-figure number. I don't remember  
19 specifically.

20 Q. Okay. And did you convey that  
21 number to Mr. Dondero when you had that  
22 conversation?

23 A. Yes.

24 Q. What was his reaction?

25 A. I mean, he wasn't happy.

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2 Q. Is it fair to say he was upset?

3 A. Yes.

4 Q. Did Mr. Dondero ever expressly tell  
5 you to not have NexPoint make the required  
6 December 31, 2020, payment?

7 A. Yes, I recall him saying don't make  
8 the payment because it was being negotiated, as  
9 I discussed with Mr. Morris, this offset  
10 concept. So there were obligations due by the  
11 advisors to Highland, they should be offset  
12 that -- you know, those obligations should be  
13 offset by this -- by this overpayment.

14 Q. And when did he tell you that?

15 A. I would say -- I would say around --  
16 probably December -- December-ish.

17 Q. Early December, late December?

18 A. I don't recall with as much  
19 specificity as -- as -- as -- as stopping the  
20 shared services payments, because we had  
21 actually made one shared services payment in  
22 November. So that is why I need to remember  
23 that one more clearly. I don't remember where  
24 exactly in December that conversation occurred.

25 Q. Did Mr. Dondero expressly use the

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2 word "NexPoint" when he was saying don't make  
3 these payments?

4 MR. MORRIS: Objection to the form  
5 of the question, asked and answered.

6 A. Yeah, we were -- we were discussing  
7 advisor obligations. So it was -- you know, it  
8 was just obligations from the advisors.

9 And -- and he specifically talked  
10 about the NexPoint payment as well.

11 Q. Okay. And it is your testimony that  
12 he expressly told you not to make that NexPoint  
13 December 31 payment?

14 MR. MORRIS: Objection, asked and  
15 answered twice.

16 A. Yes, he -- he did, during that  
17 conversation.

18 Q. And did you ever follow up with him  
19 after that about whether NexPoint should or  
20 shouldn't make that payment?

21 A. I did not.

22 Q. Did you ever, on or about  
23 December 31, 2020, remind him and say, hey,  
24 this payment is due, what shall I -- what  
25 should I do?

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2 A. I did not.

3 Q. So sitting here today, you -- you  
4 remember distinctly that Dondero in December of  
5 2020 expressly told you not to have NexPoint  
6 make that payment?

7 MR. MORRIS: Objection, asked and  
8 answered three times.

9 A. Yes.

10 Q. Can you say categorically it wasn't  
11 just some general discussion where he told you  
12 not to make payments?

13 MR. MORRIS: Objection, asked and  
14 answer four times.

15 MR. HORN: Four times now. Go for  
16 five.

17 A. Yes.

18 Q. Did you tell Mr. Seery that?

19 A. I don't believe I did. I don't  
20 recall.

21 Q. And was this an in-person discussion  
22 or telephone or email? Do you remember?

23 A. This was a phone -- a phone  
24 conversation.

25 Q. Okay. Would you have a record of --



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2 on your cell phone of when that conversation  
3 might have taken place?

4 I'm sorry, strike that.

5 Was that by cell phone?

6 A. I believe -- yes, because we -- I  
7 was at home. I mean, I don't have a landline.  
8 All I have is my cell phone.

9 Q. Do you know whether your cell phone  
10 still has records of conversations from  
11 December 2020 on it?

12 A. My call log doesn't go back that  
13 far.

14 Q. Okay. Thank you.

15 MR. RUKAVINA: I will pass the  
16 witness.

17 MS. DEITSCH-PEREZ: Just a couple  
18 quick questions.

19 FURTHER EXAMINATION

20 BY MS. DEITSCH-PEREZ:

21 Q. With respect to HCRE and HCMS, am I  
22 correct there was -- there was no direction not  
23 to pay those loan payments?

24 MR. MORRIS: Objection to the form  
25 of the question.

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2 A. Yes, I don't recall having  
3 conversations about, you know, those -- those  
4 entities.

5 Q. And, in fact, what was the tone that  
6 Mr. Dondero had when he talked to you about the  
7 fact that HCRE and HCMS payments hadn't been  
8 made when he found out that they hadn't been  
9 paid?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: Objection to form.

12 Q. What was the tone he took with you?

13 A. Oh, it was -- it was -- it was -- it  
14 was very negative. I mean, I think he cursed  
15 at me and he doesn't usually curse.

16 Q. Okay. And in your mind, is that  
17 consistent with the fact that he was surprised  
18 that those payments hadn't been made?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. Yes.

22 Q. Okay. Thank you.

23 MR. MORRIS: I have nothing further.

24 Thank you so much, Mr. Waterhouse.

25 MR. HORN: I have no questions.

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2 Thank you, Mr. Waterhouse. We appreciate  
3 your time. I am logging off the discussion  
4 and I will talk to y'all tomorrow.

5 MR. MORRIS: Super.

6 VIDEOGRAPHER: If there are no  
7 further questions, this ends the  
8 deposition -- excuse me. This ends the  
9 deposition, and we are going off the record  
10 at 7:30 p.m.

11 (Deposition concluded at 7:30 p.m.)  
12

13 \_\_\_\_\_  
14 FRANK WATERHOUSE  
15

16 Subscribed and sworn to before me  
17 this day of 2021.  
18

19 -----  
20  
21  
22  
23  
24  
25

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C E R T I F I C A T E

I, SUSAN S. KLINGER, a certified shorthand reporter within and for the State of Texas, do hereby certify:

That FRANK WATERHOUSE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th of October, 2021.



Susan S. Klinger, RMR-CRR, CSR

Texas CSR# 6531

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2 NAME OF CASE: In re: Highland Capital

3 DATE OF DEPOSITION: October 19, 2021

4 NAME OF WITNESS: Frank Waterhouse

5 Reason Codes:

6 1. To clarify the record.

7 2. To conform to the facts.

8 3. To correct transcription errors.

9 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

10 From\_\_\_\_\_to\_\_\_\_\_

11 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

12 From\_\_\_\_\_to\_\_\_\_\_

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